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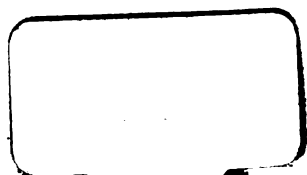
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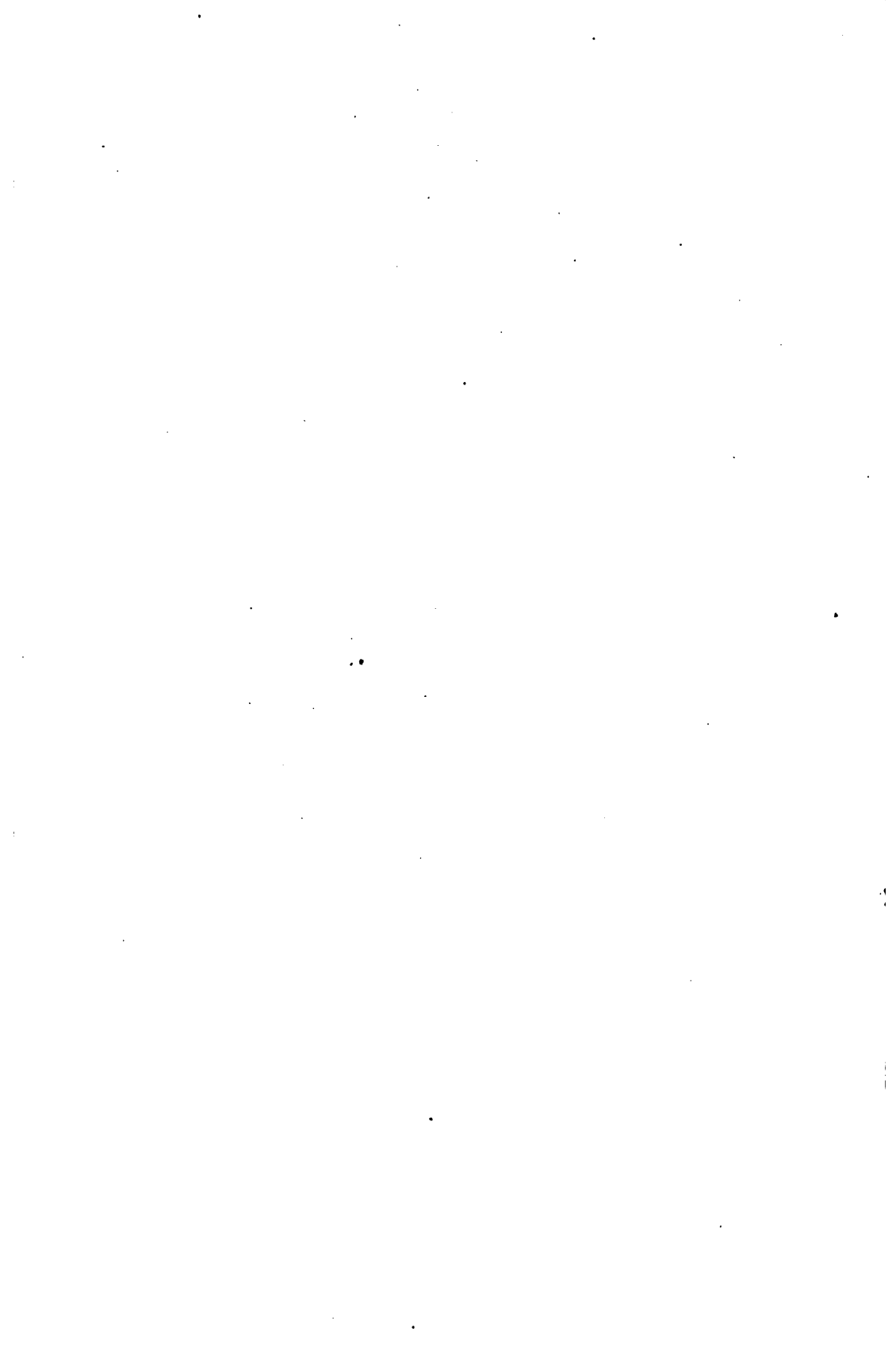


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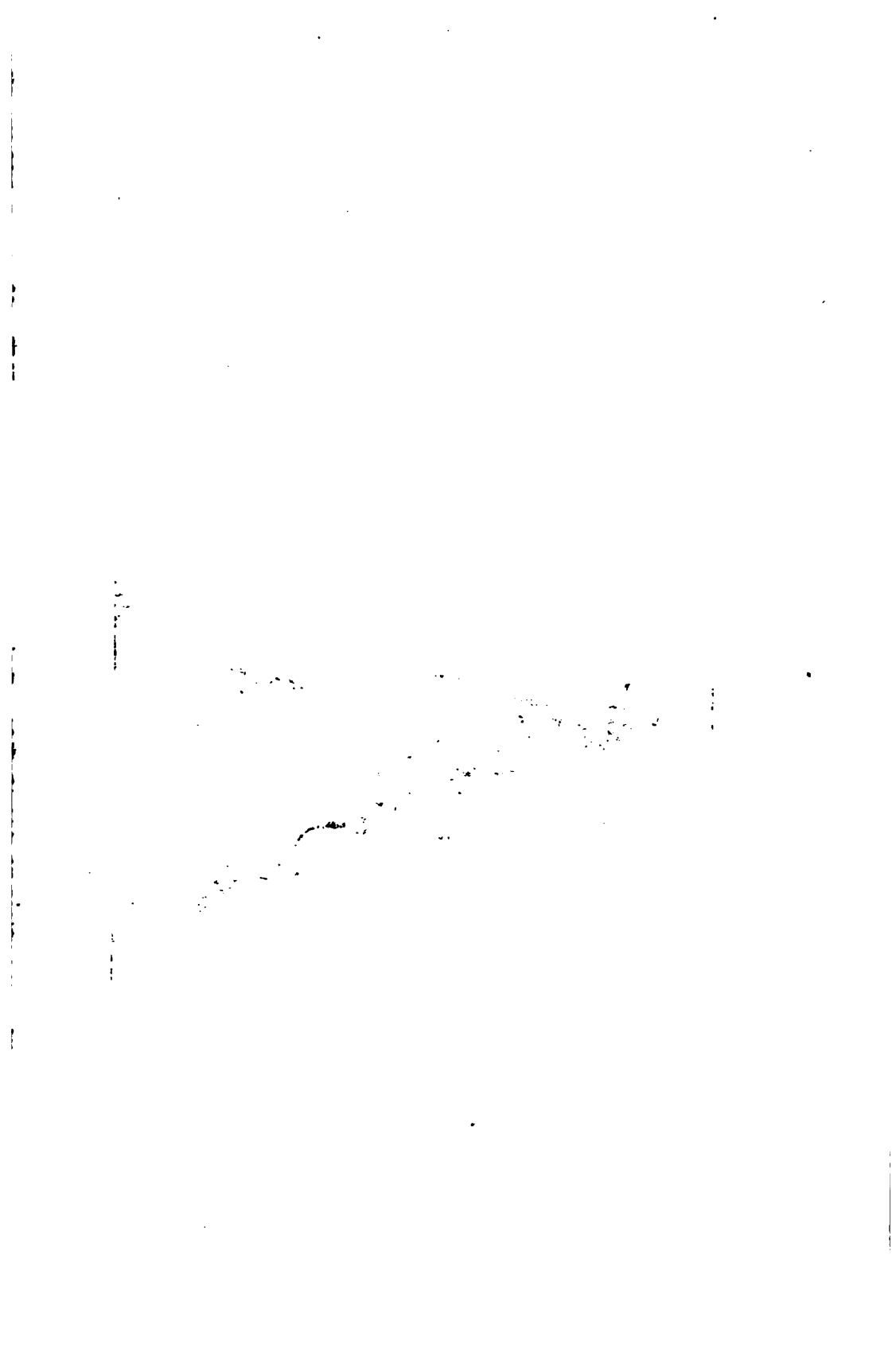
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Stephen H. Allen

# THE EVOLUTION OF GOVERNMENTS AND LAWS

EXHIBITING THE CAUSES OF THE EVOLUTION OF  
GOVERNMENTS AND LAWS IN THE  
ANCIENT AND MODERN WORLD  
WITH AN APPENDIX ON THE  
PRINCIPLES OF GOVERNMENT

STEPHEN D. CAVALLO

*"Quite a masterpiece of analysis."*

*"Many of the ideas, it can be said, are of a kind that justify the title."*

VOL. I

PRINCETON  
PRINCETON UNIVERSITY PRESS

*Sales Agent for the Author*



# THE EVOLUTION OF GOVERNMENTS AND LAWS

EXHIBITING THE GOVERNMENTAL STRUCTURES  
OF ANCIENT AND MODERN STATES, THEIR  
GROWTH AND DECAY AND THE LEADING  
PRINCIPLES OF THEIR LAWS

BY  
STEPHEN HALEY ALLEN

*" Quis custodiet ipsos custodes ? "*

*" Mens, et animus, et consilium et sententia civitatis, posita est in legibus."*

VOL. I

PRINCETON  
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## INTRODUCTION

The wide research and long study preceding and attending the preparation of this work have been prosecuted for the purpose of extracting from the recorded experiences of the various people of the earth, in the governments they have had and the laws under which they have lived, such broad and general principles as may be helpful in the work of framing constitutions and formulating laws. Neither government-building nor law-making is a science. That the moral law has some force and application is generally admitted, but that it may be violated, when deemed expedient to do so, is constantly asserted in practice. What is the moral law, and where may its precepts be found? Perhaps most men will answer, in the sacred books. But it may again be asked, what books are sacred? To this the Brahman will unhesitatingly answer, the Vedas and the code of Manu; the Buddhist, the Greater or the Lesser Vehicle, according to his sect; the Mohammedan, the Koran; the Jew, the Talmud; the Parsee, the Zend-Avesta; the Christian, the Bible, and so on through less widely accepted codes. While much of agreement can be found in all of them, there are direct antagonisms of the utmost importance.

Mohammed taught war and commanded the propagation of the word by the sword. Christ forbade it, yet is recorded as having said, "I came not to send peace but a sword." Manu taught caste and inequality among men; Buddha equality. All the Asiatic codes, including the Christian, countenance slavery, which the moral sense of Europe and America now condemns. All nations resort to war; yet its immorality is its most apparent characteristic. Every normal person feels a capacity for determining the moral quality of the acts of himself and of others, yet varying capacity, education and surroundings lead to diverse judgments on many subjects. A definition of the moral law as the rule determining right from

wrong merely leaves the question unanswered. Nevertheless it would seem self-evident that there are moral principles of universal application, binding alike on all men, by which the quality of human conduct may be tested. They attend and inhere in our existence. The fact that any such principle is not generally perceived or followed does not prove its non-existence.

Many natural laws have remained concealed from man through all the ages, and moral laws are natural laws. The progress of the age is measured by the discovery and application of natural laws to science and art. Perhaps a fair definition of the moral law would be, the Divine, the natural law, which fixes the duty of man to himself, to other human beings and to all living creatures. A man living in complete isolation from all other human beings would owe himself the duty to appropriate to himself everything that would contribute to his welfare, comfort and highest development, taking food, clothing and shelter wherever he could get the best. But civilized man does not live in isolation. His duty to himself continues, but always subject to the limitations resulting from the rights of others. A duty and corresponding right attaches to each one to provide for himself and the right of each becomes a limitation on that of every other one. This conflict of interest and loss of right to freely appropriate whatever is at hand is more than compensated by the advantages of combined effort and mutual help. It is clear that the moral law applies to all alike and commands a just sharing among the people of all the things that nature provides as well as of the fruits of their united efforts. In the division of the bounties of nature equality appears to be the natural law, but equality of opportunity to take every kind of natural product and resource in a densely peopled world is impossible. Human activities are largely applied to the search for and gathering of useful things from the surface of the earth and the mines beneath. The value of the things gained by these activities depends in great measure on the labor expended in acquiring them. There is difficulty in separating the added labor value from that of the thing as it was before

man touched it. Combination of effort for common ends implies the assignment to each of a special part of the work. Specialization requires the assignment to each of the task for which he is best qualified. Division of labor calls for the exchange of products. Advancing civilization is attended by increased combination of effort, division of labor and specialization of occupation. Amid the complexity of modern business conditions the applicability of fundamental moral principles to the rights and duties of each member of society is obscured and often lost to view. In the division of labor inequalities of burden inevitably arise. In the distribution of the benefits of combined effort equality of share to each is difficult of attainment, if not impossible. The necessity for direction and leadership implies a degree of mastery, which may be carried so far as to become oppression. Out of a disregard of duty and of the rights of others come oppression, strife and crime. In an ideal state the law would oppose its force to all unsocial and immoral conduct. To give positive sanction to conduct that violates ethical principles is inexcusable. Practical men do not expect an ideal system of laws completely enforced, but a nearer and nearer approximation to the moral law.

Let us notice a few of the customs that have long been sanctioned by the laws of great nations. In China the inferiority and servitude of the females to the males lies at the foundation of the whole social system. The wife and daughter may be abused, overworked and mistreated by the husband and father almost at will. The power of the father over his sons is also very great. Prior to the late revolution the Imperial Clan and descendants of Confucius constituted privileged classes and were supported from the taxes gathered from the toiling multitude.

In India, from remote ages, the rigid rules of caste have kept the lower orders in enforced ignorance and servitude to the ruling classes. Denial of the right to engage in any business or calling, other than those assigned to his caste, has deprived the members of all castes of that personal freedom of effort so essential to high development. Rank injustice

and disregard of natural rights lie at the base of the whole system.

In Mohammedan countries the Koran's precepts allow polygamy, and far worse than this, command the propagation of religion by war, the most immoral of all concerted efforts of men. The errors and falsehoods of the Koran are taught as divine revelation, and all inquiry tending to replace them with truth is stifled.

Throughout all the history of Rome slavery was recognized and the machinery of the government was employed to enforce the dominion of the masters. Much of the learning of the great jurists consists in rules governing the relations of masters and their slaves, and determining the status of persons as citizens, coloni, freedmen and slaves. Even in our own land, within the memory of the writer and those of his generation, slavery was the most important institution in nearly one half of the Republic. No law can be a greater departure from the moral law than that which sanctions slavery and allows one man to compel another to serve him according to his arbitrary will and take all the proceeds of his labor to use as he pleases. Nothing can better illustrate the tendency to depart from the moral law in framing human laws than the history of the law of slavery. The feudal system of land tenure after the decline of the Roman Empire worked out results similar to slavery.

Without stopping at this time to apply moral tests to the leading principles of modern law in Europe and America, let us consider what influences produced the laws above mentioned. Clearly the authors of such laws were not guided in their work by any moral principles, for the injustice of them is obvious. The universal motive has been advantage for the ruling class, and the excuse for taking the advantage has been expediency or necessity. During periods of war or civil discord men seek to assure their own safety by the destruction of their enemies. The victors in the contest seldom give nice consideration to moral rules in imposing term on the vanquished. Primitive tribes either kill or enslave their captives. Slavery has its root in war. Greeks and Romans, though ad-

mitting the immorality of slavery, enslaved their captives and always maintained the dominion of the masters by law. In the conquest of India by the Aryan invaders the subjugated natives were assigned to a servile class. The system of castes arose from the organization of the priestly and military orders and the enslavement of the native races. The victor in a fierce conflict often considered himself humane to accord life to his enemy on terms of perpetual service. The institution of slavery was never originated by a deliberative body of law-makers, nor by any great autocrat acting merely as a law-giver. Where the institution has existed, law-makers have undertaken to apply some moral rules to its incidents, leaving its fundamental vice undisturbed. We shall find as we proceed that the habit of accepting immoral systems and then attempting to apply moral principles to their incidents is universal. The enslavement of the recently overpowered and disarmed enemy appears in very different light from that of the child born in slavery. In the latter case the law of inheritance of condition is required to pass mastery from the captor to his son and the status of a slave from the captive to his child.

Under the feudal system conquest of land carried with it rulership over the occupants of it, and a theory of ownership of the face of the earth was made to give in effect ownership of the people inhabiting it. This mastery was mitigated in time by rules governing the relations of lords and tenants, and out of these rules came the early English laws of real property. It cannot be truthfully said that the idea of absolute ownership of the face of the earth is an outgrowth of war. It seems rather to have arisen from continued occupancy by successive generations of families and tribes. The influence of habit, education and environment, in moulding opinions on all questions of political science, is quite as marked as in religion, fashion and industrial habits. Nothing is more natural or more common than to base reasoning on the fundamental principles of existing institutions, and to assume that the existing system is in its main features a natural and necessary one. Thus in Roman jurisprudence

*patria potestas*, slavery and inheritance of personal status and of property were foundations which endured a thousand years. So also in India caste is the key to all judicial research, and in China paternal authority and filial piety. Following the American revolution individual liberty and restriction of the powers of government were the leading ideas of the revolutionists concerning social organization. The founders of the United States were close students of the relations of the state to its citizens, but did not concern themselves deeply with the laws governing the relations of man to man, or attempt radical changes in the laws relating to property. Even so immoral a business as the trade in African slaves was not prohibited at once, and slavery was recognized as lawful though immoral. Freedom from the unnecessary restraints of government was their great desideratum. The word liberty is given a great variety of meanings. As expressive of the freedom of action which is permissible to a person it must necessarily mean such freedom as is compatible with equal freedom for all others. Where many persons live in close proximity to each other, complete freedom of action in each with full protection against the acts of others is impossible. The moral law imposes its restraints, and not only denies all liberty to wrong or injure others, but enjoins positive duties toward them in endless variety resulting from the interdependence of man and his fellows. No system of laws has ever yet been worked out on even a professed adherence to fundamental moral principles.

Most of the confusion of thought and defective reasoning of those who speak and write on the subject of political science arise from a failure to observe the difference between questions of morality and questions of expediency and the limitations on expediency imposed by morality. While it is impossible to draw sharp lines of separation, it is not difficult to perceive that each has its legitimate field, and that the science of law, when law-making becomes a science, must rest on the application of moral principles to the determination of the rights of men and their conduct in life and an intelligent understanding of the principles which affect the selection of

expedients for the accomplishment of moral ends. Real progress and improvement in social conditions follow the promulgation of the moral law in such form that it is learned, understood and accepted as authentic by the multitude. Most great teachers of it have given their rules a religious sanction. It is entirely logical to do so, for the moral laws which should govern the relations of men must emanate from the overruling power that gives life. Moses, Confucius, Gautama, Christ and Mohammed, have each left a deeper and more enduring impression on the world than all the conquerors who have terrorized the earth combined. The fact that error is combined with truth in some of their teachings does not disprove the divinity of the moral law. It may prove the existence of the human element in the teacher and his liability to err. The work of these great teachers has been truly constructive, while that of the great warriors has been the organization of forces and the use of them for purposes of destruction and mastery. Simple moral truths of universal application lie at the base of every great system of religion. The beliefs and ceremonials are the shell and husks, ostensibly designed to protect and nourish the kernels of truth, yet in fact concealing them. It is easily perceived that moral principles are eternal truths, established by and according with the power that rules the universe. They are the same everywhere and under all circumstances. The imaginings as to the unknowable, the priestly establishments, the creeds and religious ceremonials, human inventions, are changed and moulded to suit changing tastes and inclinations.

Departure from the moral law in human conduct is due either to unreasoning impulse or views of expediency, or both combined. The rules of morality and expediency must of necessity be identical as to acts or conduct affecting the actor alone, for it is right to do what best promotes his permanent welfare, and it is also expedient. The departure from the true course in such matters is usually due to a desire for some excessive temporary pleasure, to be compensated later by corresponding pain or depression, or the gratification of some particular desire at the expense of others more laudable.

There is full liberty of choice of food, clothing, ornament, labor, recreations, fields of inquiry, aims in life, ideals, and of every activity so far as each of them is equally consistent with human welfare.

In conduct affecting others expediency is the justification which the wrongdoer makes to himself for the greatest departure from moral rectitude. Murder, robbery, theft, forgery and every other crime and intentional wrong to others, have their root in a belief or impression of the expediency of the act. Expediency is the justification claimed for all crafty schemes through which men gain riches and power to the detriment of others. Expediency is the excuse for falsehood and cowardly neglect of duty. The inability of a man to protect himself and those dependent on him by strictly moral means makes room for resort to immoral acts, deemed necessary. It is immoral to kill or maim another, yet deemed justifiable in self-defense or to protect one's family. Though expediency prompts to all kinds of immoral conduct, it has its legitimate field of vast extent. There are many different ways of accomplishing a desirable end by moral methods. The choice and use of expedients are the most common employments of the mind. The moral law fixes limitations. Expediency may freely lead in every path that touches no forbidden ground. The diversity of human accomplishments is due to choice of expedients and ends to be accomplished. Choice and use of moral expedients for moral ends are the true field of liberty. Choice of food, clothing, habitation, furnishings, labor, repose, recreation, amusement, associates, literature and moral purposes to be accomplished, affords an illimitable field for selection of activities. One may freely follow the dictates of his own tastes and inclinations wherever full liberty of action is permissible.

#### PARENTAL AUTHORITY

Whatever the social state, from the lowest savages to the most cultured nations, parental authority over young children is recognized everywhere. The parental relation is established by the divine law of reproduction. Among the most degraded



savages the relation of the mother to her child is obvious, while that of the father is often obscure or wholly unknown. All the burdens connected with rearing the young are borne by the mothers, who are often enslaved and oppressed by the males with whom they come in contact. The first well defined step in the advancement of civilization is the establishment of family relations with fathers recognizing definite relations to their wives and children. As society improves, the purity and strength of domestic ties increase. The happiness of each person and the welfare of the state are dependent everywhere on the measure of love, unselfishness and devotion to duty prevailing in the homes. To rear and protect their offspring, parents must direct, restrain and instruct them. The rulership is arbitrary in the sense that the parent acts according to circumstances on his own judgment and without restraint from fixed rules. The protection of the child from mistreatment lies in the love of the parent, who finds joy in the comfort and happiness of the child and pain in its suffering. While anger and hatred are sometimes exhibited by parents, pity and love almost invariably temper the blows and quickly restore the bond of sympathy. No other shield against harm could possibly be found of anything like the strength and efficiency of parental love. While parents have full power to direct and restrain, they must of necessity accord to their children an ever increasing measure of liberty of action commensurate with their expanding strength and mental powers. Lessons in self-reliance are necessary and may be taught to the very young with advantage. It is often better to let the little child suffer the punishment nature imposes for its act than to restrain it. The pain caused by heat and cold can only be clearly understood by experiencing it. Pain is a sentinel that warns of immediate danger, and through some pain the child must learn what to shun. What dangers and sufferings the child should be subjected to must depend in great measure on the care and instruction the parents can give it. The child has its rights and is entitled to its due measure of liberty. Of the limitations of these the parents of necessity must judge from time to time, till the capacity of the child to

govern himself is approximately equal to that of the parent to govern him. Nature fails to indicate a definite size or age at which this capacity first comes into existence. In Rome the power of the father over his son continued throughout life and over his daughter so long as she remained under his hand, that is till she married and was transferred to the family of her husband. The patriarchal system was a very natural development in those parts of Asia which were inhabited by a settled population, living under peaceful conditions and supporting themselves from agriculture or pastoral pursuits. The father of the family was the natural head of it, and the family included grandchildren, as well as children, and all other members of the household. Polygamy in places greatly extended the membership of the family and made the head of it a ruler over a community. To people reared under such conditions a paternal government would appear to be the only natural one. Among savage tribes like the American Indians and the lower Africans frequent wars disrupted families. The leadership of war parties was taken by the strong and vigorous young men, and their feats in arms gave them influence in the councils of the tribe. The elders were listened to in council, but lacked the requisite strength and endurance for commanding war parties. The organization of such war-like tribes was democratic, and combinations of the Indian tribes mostly took the form of confederacies.

In the Asiatic monarchies the king assumed authority over all the people similar to that exercised by the father over his family. This power was arbitrary and without limitation. The theory of such a government is false, because the love, which is such an active and constant monitor in the home and furnishes such a safeguard against oppression, is wanting in the kingdom. The love of even the best of kings for their subjects is largely theoretical, and in the nature of things cannot be the same in quality as that of the father for his own family. The restraining force being absent, tyranny of course results. In a populous state warm sympathy for and full appreciation of the peculiarities of each citizen by the sovereign is impossible.

## PUBLIC REGULATION OF PRIVATE MORALS

Ought the state to concern itself with private morals? That the state, which is but the aggregate of all the people in it, is deeply interested in the morals of every private person in it is clear, but that the public can interfere with the conduct of a person which concerns him alone with advantage either to him or to the state is not so evident. The Greeks deemed the culture of physical strength and beauty of form a matter of public concern as well as mental and moral training. The code of Manu deals minutely with many habits of body and mind and private acts affecting the soul, and prescribes penances and expiations for infractions of its rules. It seeks to direct the soul in its struggle to gain mastery over the body and all evil propensities of body and mind. Religion and education are the forces employed to guard against all secret violations of its commands. From early youth the people are taught that the law is self-enforcing and that every infraction of it is followed by certain and adequate punishment. In China mourning for the dead is deemed a matter of prime importance, and is enforced in the prescribed form under severe penalties. While the Book of Rites deals mainly with forms of intercourse between different persons, it also enjoins many observances affecting the individual alone. Mohammed strictly commanded ablutions, the morning and evening prayer, and other personal observances tending to cleanliness and health as well as requiring the observance of religious forms. The Church of Rome also takes cognizance of private morals and requires confession of secret sins and imposes penances for the expiation of them. Other Christian churches also deal with secret acts affecting the actor alone.

The prevailing doctrine in America and the more advanced states of Europe is that the citizen is accountable to himself and the Supreme Being only for his private morals and care of his personal welfare. This doctrine is adopted both on the ground of rightful liberty and of the inexpediency of state regulation of purely personal concerns. It must not be inferred however that this non-interference by the government

indicates indifference on the subject, or an entire lack of public influence in the direction of the best private morality. Through the public schools educational influences, potent and far-reaching, are brought to bear. By encouragement to acquire knowledge, to love truth and form and follow high ideals, the state leads rather than drives to purity of private morals.

#### PUBLIC REGULATION OF THE FAMILY

Should the state undertake to regulate and improve the relation of members of the family to each other? That these are of the highest interest to the public does not admit of doubt. The citizens constituting the state are reared in the homes and started in life with such opinions, habits and purposes as home influences have produced. Vicious and immoral parents usually rear children with similar character. On the other hand lofty purposes and upright conduct are best promoted by the lessons of the domestic fireside. From the home atmosphere of love, devotion to the welfare of each other and kindness toward all mankind radiate those warm and vitalizing influences that stimulate the growth of all that is good on earth. Viewing the importance of preventing the propagation of evil and of encouraging the growth of virtue, may the state safely leave the homes to be ruled as the members of the household deem best? This presents the practical question, where can better influences be found than those which spring spontaneously from matrimonial unions. The state concerns itself with the foundation of the household by marriage. Only in the lowest and most degraded tribes is promiscuous sexual intercourse tolerated. Though polygamy is lawful among more than two-thirds of the people of the earth, there can be no doubt of the superior morality of the union of the single pair. This is indicated by the near approximation in the numbers of each sex born into the world and is recognized even in the countries where polygamy is allowed, for in them monogamy is the rule and polygamy the exception. A few tribes allow plurality of husbands, but this system is regarded with almost universal disfavor.

There is great diversity in marriage ceremonies, but these are of relatively small concern. It is far more important to determine who may intermarry. Restrictions preventing the lower classes from intermarrying with the higher are most marked in India, and are common with the princely houses of Europe. These are designed to prevent the upper from being contaminated with the lower orders.

The family being established by lawful marriage its government is usually left almost entirely to its own members. The theory of domestic rulership varies from the *patria potestas* of the Romans, with power of life and death over all members of the household, including adult children and their wives and their offspring, to that of equal rights of father and mother over minor children and complete emancipation of the children at the legal age of majority. The right to punish children is universally conceded to parents, subject in advanced states to the limitation that the punishment must not be cruel or excessive. When it is considered that the citizens constituting the state are born and reared in these households, the vast importance of domestic morals is apparent. If the state can improve them by regulation it is desirable to do so, but before the attempt is made it must be found that the moral purposes of the state, as an organized acting force, are better than those generally dominating in the homes. It seems clear that this cannot be safely asserted, even in the best governed states, but that the reverse is generally true, and that the impulses which advance public standards originate in the homes. This of course is most apparent in democracies and republics, but domestic morals exert a profound influence, even under the most despotic governments. In this connection it must be noticed that there is as wide a difference in the character of households as of persons. Virtue and all noble impulses germinate in the homes, but so also does much vice. Moral as well as physical qualities usually, though not universally pass by inheritance from parent to child. The ancient Spartans encouraged propagation by the strongest and most perfect physical specimens, and exposed the defective infants. They however grossly underrated the factor of

love and devotion of husband and wife to each other, so absolutely essential to the highest development of the moral character of the offspring. Where husband and wife are normally healthy physically and morally there is little or no need of state interference with their domestic affairs, but may not society interfere and protect itself from the consequences of those unions that are productive of vicious and defective children? Ought the criminal, the insane and the imbecile to be allowed to marry and multiply their kind? No intelligent stock-raiser allows the propagation of defectives among his flocks and herds. He takes the utmost care to eliminate them, and understands quite well how to improve the breeds of horses, cattle, hogs and fowls. The wise farmer carefully selects the seed for his fields, excluding every defective kernel as far as practicable. Neither among domestic animals nor field crops does he hope for good results from bad seed. Why may not society exercise the same care and intelligence with reference to the propagation of the human race that it does over the lower animals? To answer this question we have first to determine whether it is morally right to protect future generations from criminals and defectives by preventing their propagation; second, whether it is expedient to do so, and third, what system can be adopted and what are the limitations of the rightful exercise of the power.

In a household which starts from a well mated, healthy and congenial pair, perfect liberty to live lives of devotion to each other and to their children is recognized as of the highest value. So sensitive and delicate are the adjustments of the affections that no one without the circle can fully appreciate or understand them. All such pairs realize their responsibility for their own welfare and shrink from all outside interference. The state generally recognizes its inability to add to domestic happiness, and interferes only in those cases where one or both parents have been grossly derelict in duty or children are incorrigible. The moral right to domestic privacy and freedom is generally conceded, and the inexpediency of state interference with domestic relations under normal conditions is recognized.

In the treatment of children parents act according to their own dispositions and capacities and those of their children. The uplifting force is love and devotion to their welfare. The happiest homes are doubtless those where the parents are able to lead their children in the right paths by reason; where all good impulses are sympathetically encouraged and the capacity for self-restraint developed as early in life and as rapidly as possible. Where force is resorted to it should always be as a temporary expedient to overcome resistance of authority. Its educational value can be no more than to inculcate the lesson that resistance is futile, and it is therefore necessary to make its use accomplish the desired result. It may well be doubted whether beating, scolding or restraint of liberty, inflicted merely as punishment for disregard of duty, ever accomplishes a beneficial result. The problem is to arouse the impulses that lead to right conduct. Blows excite a spirit of resentment and angry words responding anger. The spirit manifested by the parent arouses its counterpart in the child. Fear of punishment tends to cowardice, resort to falsehood and deception to avoid the punishment, rather than to stimulate a wish to do the things the parent will approve. The legitimate object of correction is improvement in the child, and this can only come by stimulating good impulses, convincing its reason, or awakening its perceptions of the moral quality of the act or duty involved, or leading it to see advantage or superior enjoyment in good conduct. It is often assumed that very young children can be ruled only by force. Adults are led by suggestion. The force of suggestion is most potent to the infant. The incapacity of the parents to lead by suggestion induces resort to force to drive the child in the desired direction or punishment after the act for misconduct. The primary need is that the parent be instructed in the art of governing children.

On no subject is the law more divergent than that of divorce. Even among the states of the American Union there is nothing like uniformity of rule on the subject. Theories vary all the way from allowing divorce at the pleasure of either party to denying it altogether, and the practices pre-

vailing go nearly to these extremes. A decree of court is required in all the states, but in many of them it may be obtained for slight cause and under few restrictions. The Hebrew law allowed the husband to divorce his wife at will, and Mohammed announced the same rule in substance. The objections to divorce do not appear so serious where there are no children of the union, but a child has claims on each parent for love, care and protection, and a right to a home with both father and mother in it, bound together by love. Parents of little children cannot divide the home without violating the moral law. But when husband and wife find themselves utterly unable to live together in harmony, what is to be done and what rule of public law can make adequate provision for the case? No decree of court or administrative process has ever been discovered that can compel kindness and affection. The moral rules applicable to the conduct of the parties are not difficult to perceive, but unless they voluntarily follow them, no external force can compel them to do so. By allowing a divorce the law sanctions the disruption of the family, by denying it an innocent party may be doomed to endure unbearable treatment. The obligation of the state to provide as far as practicable against unsuitable marriages and to make conditions as favorable to domestic happiness as possible may call for attention to many matters now neglected. The possibilities of improvements along these lines present a field too wide to be covered in this brief review.

#### CRIMES AND PUNISHMENTS

The primary domestic function of a government, recognized in all ages in all countries is the preservation of order and protection of the citizens from violence and wrong other than such as the governing power and the sentiment of the people tolerate. In the most primitive states violence to the person is the prevailing form of crime, and retributive justice usually takes the form of vengeance inflicted by the injured party or his friends. For homicide the kinsman of the murdered man may kill the murderer. In some states provision has been made for the payment of blood money to appease



the avenger, and for places of refuge into which the avenger may not follow. In the code of Hammurabi of Babylon, the Jewish and other ancient codes the *lex talionis*, wrong for wrong, was the rule of punishment; for any injury a corresponding injury to the wrong-doer. There is something in this simple rule that seems to appeal to the sense of justice of the child and of a great part of the grown people as well. To return blow for blow, when attacked, and to kill an assailant, when necessary to preserve one's own life is regarded as justifiable in the most enlightened states. Self-preservation appears to be a natural right. Organized society goes farther than this and after the danger is past, the culprit overpowered and held securely, as a return and punishment for the wrong done, inflicts a corresponding wrong on him. In considering the general aspect of the administration of the criminal law in Christian states the first question to be considered is, is it morally right in principle, second, is it the most expedient to promote the general welfare. ✓Writers on political science are unable to agree on the theory of punishments. The primitive idea is to compensate crime with suffering, and deter the commission of like offenses by fear of like punishment. This view is still widely entertained. Another is that the state takes such measures as appear necessary to protect society from a repetition of the offense, abstaining from merely vindictive punishments. A third is that society owes a duty to the culprit, and should aid him in every way to overcome his unsocial propensities; that the state has no moral right to inflict injury or pain on any human being for the mere purpose of punishment for any act or conduct; that good will toward the culprit must prevail in his treatment, and his welfare and reformation be prime considerations. That the state has the moral right to do whatever is necessary to protect the people when the criminal openly violates the rights of others and forcibly resists the rightful exercise of private rights or public authority, and that he must be left in danger of injury while the struggle continues and cannot claim protection from the public against the immediate consequences of his own acts, appear evident.

But when the power of resistance of the criminal is overcome, what measure of duty does the state owe him? It cannot then do him harm on the plea of immediate necessity. Can there be a defenseless human being wholly without the pale of governmental care? May the state assume a permanently hostile attitude toward criminals as men, or is it morally bound to have the same concern for those who, because of innate defects or unfavorable environment, have committed crime, that it has for normal humanity? It is apparent that the infliction of the death penalty is not on the theory of conferring a benefit on the criminal. Confinement in jails and penitentiaries under needlessly rigorous conditions rarely has any tendency to reform, but on the contrary stimulates the study of crime, induces hateful and revengeful feelings, and at the end of the term turns out a more expert and hardened criminal. The view generally entertained is that the system followed tends to protect society from further wrongs by the criminal and also to deter others from like offenses by the fear of like punishment. So far as the criminal's own conduct is concerned experience abundantly proves that the protection of society ends with his confinement. Unless he goes out with better social purposes than he had when he went in, the public purpose has not been accomplished. It is at least doubtful whether cruelty has any tendency to convince him of the immorality of the act for which he is punished. He will, however, readily perceive the immorality of the excessive cruelty to himself, and hate those who inflict it on him. The state being responsible for his confinement; he quite naturally attributes all his suffering to the public and feels that society in general is his enemy. To put him out into society with such feelings is almost equivalent to an invitation to recompense himself as best he can at the expense of society for the wrongs done him. So far as the tendency to deter others from like offenses is concerned, severity of treatment in confinement can have no effect unless known to the persons whose conduct it is desired to influence. This could only become generally effective by making the barbarities practiced generally known, which of course the state and the prison officials would be unwilling to do.

The researches of modern criminologists disclose the extreme crudity of the penal codes of Europe and America, which yet appear far better than the ancient *lex talionis* or the Asiatic codes of modern times. Malicious murder, deliberately committed, always produces a profound sensation of horror, usually accompanied by a general desire for speedy vengeance on the murderer. Of such murders many are induced by a desire of revenge for some real or fancied injury. These are seldom if ever committed under normal mental conditions, for the normal state of the human mind is one of either indifference or good will toward others. The misanthrope is such because he is abnormal from birth or made so by subsequent influences. The normal healthy person desires the welfare of others, and it is because of this general feeling that the community is shocked when a murder is committed. If all or a majority were misanthropes, they would feel pleasure rather than pain at the destruction of a human life and applaud rather than condemn the act of the murderer. The law now prohibits the friends and relatives of the murdered man from killing the murderer under the natural promptings of anger and resentment caused by the deed; but after trial and conviction, it requires a public officer, having no feeling in the case different from that of the general public, to put the murderer to death, deliberately, intentionally, and at a time and place appointed by the court in accordance with the law. In a large part of the cases the general summing up of the matter is that the murderer has taken a human life to gratify his private desire for vengeance, and the public has taken his life to gratify a general desire of the people for vengeance. Hatred moved the murderer to commit the deed, and hatred of the crime, carried on to hatred of the human being who committed it, induces the public to execute the murderer. Not only is the public act similar to the private crime, but the motive inducing it is essentially the same. In morals then the punishment is wrongful as well as the crime.

One of the cardinal doctrines of the criminal law is that the defendant must be tried for the particular offense with which he stands charged, and the inquiry be strictly limited

to his guilt or innocence of that offense. It is not a century since people were executed in England for small larcenies and other minor offenses. The extreme penalty of death was inflicted for the single act without reference to the general character and conduct of the culprit, or to his environment. It is apparent that organized society has no greater moral right to harm a citizen merely to gratify the general desire for vengeance than a private person has.

The whole system of harsh punishments rests on views of expediency for its justification. It is doubtless true that some people are deterred from crime by fear of punishment, but it is equally true that criminals usually rely on concealment of their crimes and escaping the punishment, whatever its severity. The moral tone of any state that punishes harshly is necessarily low. Reports of the hangings of criminals shock the finer sensibilities and teach lessons of hatred and disregard for human life. If the state is cruel and merciless why may not the private citizen be so too? The criminal in fact seldom weighs the punishment against the crime. He always expects to avoid conviction and escape the penalty, whatever it may be. Fines and forfeitures may deter from conduct having no moral turpitude, but prohibited by law, but have little influence on hardened criminals. (The best justification that can be found for vindictive punishments is that the state has not sufficient intelligence and moral force to find better means for the execution of its laws. If laws prescribe punishment for their infraction and no other means of compelling obedience to them, then the punishment must be administered or the law is without force. The general sentiment of mankind is strongly in favor of law enforcement, so vindictive punishments continue.

Can expedients be found for the prevention of crime and the protection of society without the violation of the moral law by the state itself? Manifestly this question must be answered in the affirmative, yet perhaps no person is capable of giving a full and clear statement of the expedients which would fully accomplish the object. Parents find it necessary to study the peculiarities of their children and to adapt their

corrections to these peculiarities. This however is of minor importance, for the secret of success in governing the young lies in earnest loving care, which instructs and leads the child to act for its own best interests and greatest joy, which gives liberty to choose where the question is only of expediency or taste, which makes clear the consequences of wrong-doing, not in arbitrary human punishment, but as ensuing naturally and necessarily from the misconduct itself. It is by leading the child to a clear understanding of the advantages of good conduct, and by instilling lofty sentiments of virtue, truthfulness and kindness, coupled with the opportunity to realize in practice the truth of the instruction, that strong characters are formed. Mere abstract teachings may not be, and usually are not, comprehended. The child must be led in the right paths and restrained from going in the wrong ones. At no time and under no circumstances is it permissible for the parent to exhibit or feel hatred toward the child. Love attracts, hatred repels. No person can by any possibility exercise a beneficial influence under the impulse of hatred. Neither cruel beatings nor weak indulgence in wrong-doing is to be tolerated. The parent must maintain a close bond of interest in the doings of the child, encouraging all good deeds, and pointing out the evil and showing why and wherein it is wrong. Children instinctively rely on parental instruction, if parents are truthful and sincere, and delight in their sympathy and approbation. Knowledge that an act is condemned by parents who are habitually kind and sympathetic is usually sufficient to prevent its repetition. To restrain misconduct and compel the performance of duty the use of physical force is sometimes necessary; but when used it should always be made manifest that it is justly used for good ends. Many parents lack moral force and are unable to control their own passions and weaknesses. The children must then suffer accordingly. In such cases whence is the elevating impulse to emanate? Usually and mainly from the love of the parent for the child.

To society the correction of its weak immoral and vicious members presents the same task but in a different form. The

state undertakes to protect each of its citizens against the violence and aggression of others. Most monarchical governments have been based on the principle of paternal authority in the ruler over all the people. Unfortunately the exercise of paternal power by a ruler over great numbers of people lacks the sympathetic element which emanates from the parental relation. The king has a great many bad children whom he proceeds to punish. He knows of their vices only. These he hates and carries the hatred on to the possessors of them. He punishes in a spirit of vengeance and harshly. From the bamboo to the headsman's axe the purpose is to extirpate crime and inspire fear in others of like rigor for like offenses. To perform the service of administering the punishment men are chosen who are not greatly shocked at exhibitions of cruelty, and even delight in it. Though instances of compassion for criminals are not wanting in Christian countries, and at times morbid sympathy is exhibited, the general spirit is all too similar to that in despotic governments.

To approach the consideration of crime with a feeling of genuine desire for the welfare of the criminal as well as of society may be beyond the stage of morality generally prevailing, yet it is not too soon to perceive and declare the true principles applicable to the subject. Everyone who has had much experience with criminals knows that practically all of them have virtues and are susceptible to friendly attachments as well as other people. They are usually specialists in crime. The homicide may be truthful and scrupulously honest in the payment of debts and performance of contracts. His crime is generally due to some abnormal emotion. It is impossible to draw a clear line of demarkation between irresponsible insanity and responsible passion. The legal rule that the defendant is responsible for his act if he knew at the time of committing it that it was wrongful, even though he was powerless to master his passion, is harsh when the purpose of the law is merely to measure out a given quantity of punishment. The forger, the pickpocket, the defaulter or the perjurer, may have as little inclination to do bodily harm to another as the most exemplary citizen. The robber and the

horsethief almost invariably have generous impulses and devoted friends to whom they are strongly attached. The perjurer may have no other prominent vice, and may have friends whom he does not deceive. Crime may be committed in accordance with a well defined inclination to a particular class of offenses, or under stress of circumstances which produce a temporary moral depression. This is more apparent in homicides than in other crimes, but offenses against property are often the result of temporary external influences which the culprit cannot resist. To weigh the conduct of a person charged with crime fairly, the judge should be able to see his act from his standpoint. This he is but rarely able to do. Everybody departs more or less from the strict line of moral rectitude. The Chinese, more logically than the Europeans, treat every failure to perform a duty or obligation as an offense to be corrected, and grade punishments according to the magnitude of the wrong done and all the circumstances connected with the offense. They are however far less sympathetic in their treatment of offenders than Americans.

It is now quite well understood by criminologists that a single offense may be committed by one who is not necessarily starting on a career of crime, but may completely overcome his criminal inclinations; that it is necessary to know the character and environments of a convict in order to understand how he should be treated with a view to his reformation, and that men are made better by sympathy and encouragement in doing what is right and useful, rather than by harsh punishments. Many crimes are directly attributable to abnormal and diseased conditions of the body or the brain. Some of these can be speedily and certainly cured by surgical and medical treatment. Instead of burning or hanging the humane and logical punishment of rape would be castration, which would free the culprit from all further impulse to commit such a crime. The same operation might be performed with great advantage on some of the imbecile, insane and criminals of other sorts. Imbeciles who are a public charge certainly ought not to be allowed to propagate, nor the incurable

insane or confirmed criminal. This like every other treatment of unfortunates should be done in a spirit of kindness, and for the purpose of benefiting rather than injuring them. In many states laws are now in force prohibiting the marriage of members of these classes, but such laws are by no means a full protection to society. In many cases it is necessary to take more effective measures. The exercise of such power is not necessarily liable to greater abuse than of others now commonly employed. Whatever measures are taken to cure mental and moral diseases should be prompted by the same motives as those which prompt surgical operations or medical treatment for normal people. All these unfortunate classes are children of the state, and the state is responsible for their welfare.

Opposed to the performance of its moral duty by the state in the treatment of criminals and defectives are views of expediency. In apprehending and disarming criminals and lunatics it is often necessary to employ force and to do them bodily harm, yet a resolute man can often make an arrest without any injury, where another would have a serious conflict. It is impossible for the state to always select the best possible agents to do this work. So long as men are imperfect, they will fall short of the best possible achievements in every line, and a state, acting on the most humane and enlightened principles and theories, will necessarily exhibit imperfections in practice. It is of the utmost importance however that the state free itself from every just charge of acting on the principle of hatred toward any class of its citizens. Charitable institutions, prompted by sympathy for unfortunate humanity, are being rapidly multiplied. The elimination of all the burdensome classes by wise and just means is not an idle dream, but an accomplishment which may be approximated in the near future.

The code of Hammurabi of Babylon exhibits the spirit of hatred toward criminals. Of all punishments, maiming, so frequently imposed by this code, is the most impolitic, for it leaves society still burdened with the criminal after his power to be useful has been diminished and his hatred for others



stimulated. To put out an eye or cut off a hand or foot is a most shocking exercise of cruelty, yet such punishments were long recognized as just throughout Babylonia and Judea.

One of the most valuable ideas developed by Bentham in his *Morals and Legislation* is that of the fecundity of various impulses. Much of the cruelty and misery in the world has resulted from laws like those of Babylon, which constantly instilled a lesson of hatred into the minds of the people. The propagation of sentiments of amity and sterilizing those of enmity are matters of prime importance for the consideration of legislators in dealing with crime, and should not be left in the sole care of moralists and religious teachers. It is evident that no state ever has or ever can weigh out and impose on each culprit a measure of punishment nicely balancing his offense. The multiplicity of considerations to be taken into account in each case is so great that adequate judicial machinery cannot be constructed for the work. Restraints seem necessary, and the imposition of them must be in accordance with law by public agents, but the deeper and stronger purpose is to induce good conduct. Wars, the execution of criminals, torture and all vindictive punishments propagate the spirit of hatred and induce criminal conduct.

#### NATIONAL CRIMES

The strong nations are subject only to self-imposed checks, prompted by sentiments of justice, selfish interest, fear or other considerations influencing their conduct. There is no superior force to restrain or punish them. That great nations commit great crimes is apparent. The example of an aggressive war teaches all the people of the nation a lesson of crime. While the nation itself acts the part of a criminal how can it hope to instruct its citizens in morality? An aggressive war to take by force that which belongs to another is identical in principle with the deed of the robber. The incidental slaughter in battle corresponds exactly with the murders the robber commits in getting his booty. Logically the state should deny to itself utterly the right to use military force against another except in self defense. The moral law ap-

plies as well to nations as to persons. It is only by full recognition of its binding force in all human relations that a state can hope to deal successfully with its morally weak citizens. Judicial settlement of international disputes in accordance with fixed principles is indispensable to a complete scheme for the elimination of crime. The false lessons inculcated by a great war affect the moral tone of the people for generations. The nation should be the great teacher and exemplar of morality. When it voluntarily goes to war it becomes a great teacher of crime.

#### LEGISLATIVE MORALITY

The functions exercised by a state are divided into legislative, judicial and executive. Briefly stated, the legislature declares the law, the judiciary interprets it and determines its application and the executive carries it into effect. It would seem that the business of a law making body would naturally be to formulate rules of conduct and of rights expressive of the moral law. The most casual examination of the work of any such body will disclose the fact that considerations of expediency largely predominate, and that the pure moral law is generally regarded as too good for practical use in a world where men are constantly seeking personal advantage by the use of more or less immoral expedients. In defining crimes the legislature gives names to certain classes of immoral acts. The list is brief when compared with one including all the immoral conduct of which people are guilty, but it includes those most vicious and common. Concerning some vices there is a tendency for public opinion to ebb and flow, and for legislatures to adopt extreme measures of repression at one time and at another to indulge the utmost toleration. Thus drunkenness, gambling, prostitution, liquor selling, usury taking and like offenses are sometimes visited with severe penalties, and at others with none. Heresy, witchcraft and other fictitious crimes are at times visited with death by torture and at others laughed at as absurd. Resistance of an oppressive ruler is treason when unsuccessful and patriotic revolution when it results in the expulsion of a

tyrant. Smuggling goods is an offense or not according to the prevailing policy of the government with reference to revenue and foreign trade. It involves no moral wrong when the trade is in useful articles and the parties to the transaction are mutually benefited, except as there may be a moral obligation to pay a tax on the goods.

On the other hand there are moral wrongs in great number which European and American states never attempt to punish as crimes. It is morally wrong for an able bodied man to live by begging instead of useful labor. This is sometimes punished though the beggar gets only the most meagre subsistence from the public. It is a far greater moral wrong for a strong healthy intellectual man to live in idleness and luxury on the labors of others, yet those who have means to do so are not only never punished, but are usually looked up to as of a superior class. It is always wrong to refuse to pay a just debt when able to do so, but it is not classed as a crime. It is a moral wrong to withhold from another anything that of right belongs to him, yet in many cases it is not regarded as a crime. The Chinese more logically classify all wrongful acts and failures to perform duties as punishable offenses. It is morally wrong to fail in any duty to aid another, yet rarely punishable. It is morally wrong to refuse to do a useful part in life and exchange service for service and kindness for kindness, yet it is not and seldom could be a punishable crime.

From the instances given it is apparent that a legislative body in selecting offenses to be punished is governed by views of necessity and expediency. It is utterly impracticable to have courts sitting in judgment on every trifling deviation from strict moral rectitude. Such trials would be an intolerable burden, productive of great harm and little or no good. The legislature therefore selects such crimes as appear most dangerous to society and imposes penalties for their commission. In dealing with these it is a matter of great difficulty for the state to keep within moral limits. With the abolition of whipping posts, pillories and the death penalty and the adoption of more humane treatment of prisoners in places of confinement, there are evidences of a grow-

ing conviction that the state has no moral right to do evil to a criminal to gratify public hatred of the crime. The true theory of the relation of the state to criminals is that it is one of guardianship and similar to that assumed in the care of lunatics. Its duty is to protect the public against their violence and cunning, and at the same time promote the welfare of the culprit.

In dealing with the rules governing what are termed civil cases the legislature has a far wider field to cover. Crime is abnormal and exceptional, but in highly civilized states the people are interdependent, and the rules governing their dealings and relations have more or less effect on all. It would seem to be the business of the law-making power to elaborate and arrange in logical order all rules which are to be observed as law. It would also appear to be its duty to make every rule conform to the moral law; in fact to make rules which are merely expressive of the moral law applicable to each different class of relations and transactions. Neither of these things, however, has ever yet been accomplished. Nothing can better illustrate human selfishness and fallibility than the deficiencies and imperfections of the great codes which have been promulgated in different ages and parts of the earth. Cases continually arise for which there is no provision, and doubts as to what rule governs under a given set of circumstances perplex the judges. All great codes have been in main compilations of the rules already observed in the courts, and have naturally embodied whatever unjust and immoral system had been before firmly established. Thus the Code of Manu, so exalted in much of its principles, is based on classifications of the people designed to maintain the supremacy of the priestly and military orders. The code of Justinian merely continued the laws concerning slavery, personal relations and property rights with slight modifications, none of which reached their fundamental immoralities, and the Chinese code adheres to the theory of the inferiority of women and cruel punishments for all serious derelictions.

The absence of any general codification of the law in English speaking countries may be accounted for in part by the

greater complexity of industrial and commercial affairs, the rapid substitution of new methods for old, and the adherence to judicial precedents to supplement the statutory law. The difficulty in bringing a large representative body like the British Parliament or an American legislature to an agreement on so many and such varied topics as would necessarily be included in a code covering the whole field of civil law is too great to allow a complete codification at one time and as a single act. Codification by topics is more feasible, and some progress has been made in this way in several states. The rapid multiplication of judicial precedents, the disposition of some courts to draw nice and even fanciful distinctions in order to reach a desired result, the breaking down of wholesome rules by the multiplication of exceptions to them, and the growing impracticability of administering substantial justice by the system now followed, call for some form of more concise and authoritative statement of the law. The multiplication and diversification of business enterprises and combinations have complicated the law of agency, employer and employee, corporations and kindred topics. Continuing development will doubtless cause many more rapid changes in methods. The law governing the new relations thus developed cannot lead, but must necessarily follow the new conditions. Codification for the future can only cover the field of past and existing needs; it cannot adequately provide for the unknown.

The principal functions ordinarily exercised by all legislative bodies relate to the creation of offices, defining their functions, designating the manner of filling them, levying taxes, expending public money and regulating the various branches and departments of the governmental system. In exercising these functions they work in the true field of expediency. There is nothing in the moral law indicating the number of officers needed by a state, the duties properly attributable to each, the length of time each should serve or the mode of their selection. It does, however, require that each public servant should render a just equivalent in service for the salary he receives, and impose restrictions on his invasion

of the rights of the people. In devising and constructing the machinery of government the law-making power has the task of providing governmental agencies to restrain the people from doing wrong and to compel them to do right. In this it undertakes to exert a moral force superior to that which directs the conduct of such of its citizens as it is designed to regulate. All experience proves that the men chosen for official positions, no matter what the form of the government, are not distinctly superior in moral purposes to the average citizen. They are however superior to the classes most needing restraint and supervision. By carefully defining their duties and strictly limiting their powers the officers are restrained from misconduct and instructed in the performance of their duties.

The law-making power constructs the judicial system, establishes courts, provides for the selection of judges, fixes their compensation and tenure of office, prescribes rules of procedure and is responsible for the principles of law administered in them. It also outlines the organization of all the executive branches of the government, fixes the number and prescribes the duties of each class of officials and provides compensation for their services. It authorizes the organization and equipment of armies and imposes taxes to maintain them. In doing each of these things it is evident that the end to be accomplished should be a moral one, but in devising means to accomplish it, the legislature necessarily chooses such instruments and methods as it deems best adapted to the end. Considerations of expediency are controlling. If these were necessarily considerations of public expediency, the state would be in no danger except from errors of judgment, but unfortunately personal and party expediency are quite too often controlling considerations. Where autocratic power is given to one man, his ambitions and personal interests usually outweigh the public welfare. If he has the instincts of a robber, he makes war on his neighbors for his own aggrandizement, and leads his subjects out to be maimed and slaughtered in the effort to kill others. Where the law-making bodies are composed of many members, factional and party

expediency often leads astray. An exchange of personal favors between members at the public expense is also a most fruitful source of bad legislation. There is a never failing tendency to multiply offices and increase salaries to the utmost limit that the people will bear. This is true of all forms of government, though most extreme in the most despotic. It results everywhere from mere motives of personal expediency.

✓ There is a further question in which no moral consideration is directly involved, yet concerning which there is much strife and hot contention. What business functions and useful enterprises ought the state to conduct? With the increasing disposition and capacity of men to combine and coöperate in enterprises calling for concert of action, industries have developed employing great numbers of men. Railroad, telegraph, mining, manufacturing and trading companies, deal with so many people that their management becomes a matter of public concern. It is demonstrated that they can be operated successfully by private corporations acting through their own agents and officials and under their private laws. It is also shown by experience that some of them can be successfully operated by public agents. The question then is primarily one of expediency. Yet expediency deals with the selection of means to accomplish ends, and we often find public expediency and private in sharp conflict. Whenever it can be truthfully said that the public is as well served by a private owner or corporation as by a public agency, it would seem to accord with the principle of liberty to leave the business in private hands. But where the governing agency of a private corporation uses its power to enrich a few at the expense of the many, or fails to give as good service as its revenues warrant, it would appear necessary to either effectually supervise or assume the management of the business. Supervision necessitates two sets of managers, one for the private owner and the other for the public. There is a marked trend in the direction of the assumption by governments of useful business functions, but no modern state has ever approximated the business organization of ancient Peru, which

singularly affords a model of state ownership of the ultimate title to all the land, mines, fisheries, flocks and herds, as well as the roads and public buildings.

In determining the expediency of assuming business functions by the state the capacities of the men whom it can and will place in public office and their moral purposes are factors of prime importance. No mere theory of organization, however attractive, can make good a lack of capacity for the duties imposed on public agents. Much may be done by those charged with the general supervision of grant enterprises to systematize and simplify the work of each subordinate, and by careful instruction in their respective parts to qualify men of moderate capacity for their work. This is equally true under public and private management. The great corporations exhibit great inequality in the apportionment of the benefit of the combined efforts of many in the conduct of their business. These inequalities are based in part on the value of the effort contributed, but much more on positions of advantage held by some, due to the government of the affairs of the corporation by a select few. This results from the plan now generally followed of allowing a majority of the stockholders to rule. It usually insures efficiency and vigor of management, but at the expense of much injustice. The Post Office, operated by the governments, is the greatest and best business organization in the world; and is a model for other lines.

The legislature makes provision for public schools, in all the American and European states, with some few exceptions. In assuming the function of educating the young in public schools modern states have done more to elevate conceptions of duty, standards of morality and efficiency in all lines of activity than by any other means. Here direct public supervision has been shown to be vastly better than private direction. The Hindoos sought to insure the education of the twice born classes by requiring the instruction of the youths as a religious duty. The Chinese encouraged learning by making it the avenue to public employment. Modern states give instruction as a preparation for all the duties of life.



The Hindoos, the Mohammedans and many Christian states regard the maintenance of the established religion and the observance of religious forms and ceremonies as not only a legitimate function of government, but one of prime importance. The Chinese regard forms and ceremonies, mournings, costumes, kneelings, knockings and salutations of all kinds as matters worthy of strict regulation by the state. It is difficult to perceive that any moral question is involved in religious ceremonial or the formalities of Chinese etiquette, though education and the general consensus of opinion may give them an artificial value hard to comprehend.

Except where limited by constitutional restrictions, as in the United States, the legislature is free to select its fields of activity, to choose the ends it will try to accomplish and the means it will employ for its purposes. It may deal with matters affecting the welfare of the individual only, with those relating to the intercourse of one with another, and with all forms of organization and combination of men, and it necessarily deals with the political organization. Viewing the limitless field of possible activity and the varied impulses that representatives from all parts of a great country bring together, it is not surprising that schemes in endless variety are presented for consideration. As a condition precedent to any improvement there must be a suggestion of something new. On the other hand, in order to proceed safely, it is necessary that a new rule of action, to be followed by many or all, should be well understood by those it affects. So, much discussion and consideration of new projects is indispensable. The reformer, imbued with the great value of his scheme is anxious to have it put into immediate operation, while the conservative objects, inquires and hesitates till thoroughly convinced that it is good. The friction caused by the ardor of those who propose and the immobility of those who resist often produces heat and sometimes conflagrations; yet the best results seem to call for something of this process, followed by a general agreement. Before any great change in the order of things can be of full benefit, it is necessary to prepare the public mind for it and educate the people to act

in accordance with it. The French revolution clearly exhibits the force of habit and education in continuing bad systems in spite of sweeping reforms devised and put forth by the legislative power. Men who had been long accustomed to obey a master could not at once find prosperity in liberty. The laborer, who has always performed tasks under a master for wages, may be and often is incapable of conducting a business of his own with any degree of success. He may utterly fail to obtain the materials necessary for his employment at the only work he knows how to do. The greatest human achievements requiring the combined efforts of many are only possible of accomplishment by specialization and division of labor. To each participant some part must be assigned which he fully understands. There must be intelligent leadership, causing all to move harmoniously with strength united and not opposing the force of one to another. The distribution of the profits resulting from a great enterprise may be most unequal and unjust, so that those who furnish the capital or direct the operations receive grossly excessive shares, yet if the underpaid laborers are incapable of carrying on the business at all without the capital or supervision, there may be no other alternative but to continue in the service or starve. In all attempts to substitute a just for an unjust system it is indispensable that those who are to be benefited be educated to act according to the new plan.

In despotic countries every combination of the people not directly authorized by the government is looked on with suspicion as likely to breed resistance of arbitrary power. In the most advanced states the various forms of voluntary organization promoted by private citizens are almost innumerable. Their numbers and size bear evidence of the increasing confidence of man in his fellows, as well as of growing capacity for combined effort. The earliest charters in England and the American colonies were granted by the crown or act of Parliament or colonial legislature as a special favor. Now corporations may be formed under general laws for designated purposes, and in many states the only limitation of purposes is that it be to carry on a lawful business or for

social, religious or charitable purposes. In recent years vast fortunes have been accumulated by promoters and manipulators of corporations by more or less dishonest transactions in their stocks and bonds. The unscrupulous men and the immorality of their methods have been concealed behind the artificial structure of the corporation. The vast aggregation of capital and combination of men under the control of the managers of the great business corporations in the United States have given great influence to them in political and governmental affairs. All departments of the government have been more or less tainted by their insidious and often corrupt methods. One of the great problems now prominently before the people is that of correcting and prohibiting the abuses connected with these great business organizations without impairing their usefulness. This cannot be done by merely regulating the affairs of the corporation itself as an entirety. It seems more important just now to regulate the operations of the men who manipulate corporations and their stock and bonds, and by indirection fleece the general public and oppress the employees of the company. The immorality lies in the acquisition of unearned fortunes by cunning and fraud. Even when the people are fairly informed concerning the evils to be remedied, the practical difficulties to be encountered in devising remedies to overcome the most powerful and wealthy combinations in the country are very great. Inordinate private fortunes are unhealthy in their tendencies and influence on the body politic. The simple and direct method of dissipating them is by the use of the taxing power.

Legislatures deal with existing conditions. It is idle to denounce penalties against crimes that no one commits, or that are so rare as to be negligible. Laws affecting property and contract rights must be adapted to needs either present or plainly foreseen. Men differ widely in their views on the abstract questions of ethics involved in the distribution of the proceeds of enterprises to which many persons contribute in various ways. One fundamental proposition seems to be commonly overlooked. A just claim to wealth in excess of a fair share of the face of the earth, its natural products and

the fruits of the toil of past generations, must be based on the personal services of the claimant. This of course excludes from view the claims of the helpless and dependent, and applies only to those able to do useful service. Service meriting reward may be rendered in any useful form of mental or physical activity, but it must be personal service of the claimant. In morals there can be no such thing as vicarious earnings. Personal merit affords the only possible basis for a just claim of reward. The ways in which one may be serviceable to his fellow men are numberless, and in the multiplicity and complication of human affairs the value of the service and the designation of the persons who ought to give the compensation for it, are often so uncertain and obscure that no definite rule can be announced. In this situation the best that can be reasonably demanded is a fair approximation to a just and uniform rule. Yet in no country are the laws based on a theory requiring personal merit as a basis of property rights. In the United States unlimited land monopoly is allowed and protected. The only limitations on the amount and kind of land over which one may exercise absolute dominion are ability to purchase or otherwise acquire title and liability to taxation and the exercise of the power of eminent domain under which it may be purchased for strictly public uses. In nearly or quite all civilized countries the title to land and movables also passes by inheritance or will to designated persons, wholly without regard to merit, needs, amount and capacity or disposition to use properly. A small inheritance tax is sometimes imposed, but this does not materially affect the general proposition. On the other hand a very large part of the people have no land, no money to buy it with and no capital of any kind. Their sole dependence for subsistence is on employment by those who have land or other capital for wages. For a dwelling place they are dependent on the terms imposed by landlords and their ability to get wages enough to satisfy their demands. These conditions exist because the law allows them. Are the laws just in these respects? Monopolies of coal, oil, gas, iron, copper and other mineral products, and of water, waterpower, trans-

portation lines, means of transmitting intelligence, trade and industry, all rest on a similar basis. The law and the power of the state protects them. The courts confirm their titles and enforce their contracts without regard to public interests. Established legal theories and rules are followed without regard to fundamental moral principles. Justice demands more than that the destitute citizen shall have freedom to make such contracts for his services as he can. It requires that it be made possible for him to make just contracts through which he can obtain the fair value of his services. Justice also demands that the product of his service shall go to the one for whose ultimate use it is performed without the addition of any unmerited profit to the employer or exploiter. Monopoly of every kind stands between the producing and consuming classes and extorts that which it has not earned and does not merit. The law-making power is responsible for the existence of every form of monopoly. It actively promotes or passively tolerates every vice that inheres in monopoly. In the final analysis it will be found that every form of special privilege and unjust advantage has its root in the law and endures only because it is protected by the public force. The socialists point out the injustice of the exploitation of labor by those who control the capital. The remedy they propose is a complete reorganization of society. One may readily concede the soundness of their criticisms on the injustices of existing systems without approving the expedients by which they propose to remedy them. It may be that progress toward conditions of ideal justice can be made more rapidly by the use of other expedients for which the people are better prepared by custom and education. The single tax may tend to undermine land monopoly, but will it prevent further exploitation of labor? The value of expedients is and in the nature of things must always be more or less experimental. The ultimate moral purposes to be accomplished by the legislatures will remain approximately constant. Experience abundantly proves the inertia and resisting power of habit and the extreme difficulty of successfully operating a new system for which the multitude are unprepared. On the other hand, no

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matter what the form of government or plan of social organization, evils clearly defined and persistently pointed out by those in a position to influence the governing body may always be remedied without disrupting the bonds of social order to which the people are accustomed. Revolution, for which the people are fully educated, may accomplish great reforms suddenly, but revolution for which the people are unprepared is quite as likely to retard as to advance the cause of justice.

The forms in which unmerited revenues are now drawn from accumulated wealth are mainly rent, interest and dividends on corporate stocks. Rent and usury are old forms of revenue and have been declaimed against from very early times. It is only recently that corporate stocks have become conspicuous. Numberless laws have been promulgated against usury, varying in terms all the way from absolute prohibition of all interest to the allowance of all the parties agreed upon. Rent has often been declaimed against as robbery. The defect in the reasoning of those who challenge the rightfulness of claims to interest and rent is mainly in the failure to go back to the right starting point. The necessity for capital in all business enterprises and the universal custom of giving its owner compensation for its use show a general recognition of the merits of economy and prudence in the accumulation and preservation of property. The service of preserving the grain after it is harvested is as useful as that of raising the crop. He who performs this service is entitled to his reward. Economy in use is a merit to be compensated with the savings. But property unjustly acquired, or gained by accident of birth or favor, affords no just basis for an income in any form, except as the possessor earns it by his own efforts combined with it as capital.

Unearned wealth, no matter how it may have been acquired, is usually either soon squandered or invested in land, interest bearing securities or corporate stocks. Modern exotic fortunes are all largely made up of such investments. The incomes of the owners derived from the rents, interest and dividends produced from such investments is then unearned tribute paid to the investors. The unjust burden may not

fall on the ones who make the final payments. It may and often does happen that they in fact profit from holding an intermediate position and that the real burden is passed on to others. This may be illustrated by an investment made in the bonds of a manufacturing company owned by a stock gambler, who acquired his wealth by fraudulent dealings in the stock market. The manufacturing company by use of the capital in a business protected by the government or so overgrown as to become a monopoly, may extort inordinate profits from the general public consuming its products and make profits on the borrowed capital largely in excess of the interest paid, or by monopoly of the labor market may withhold from its employees revenue that justly should go to them as wages. In such cases the burden of the interest is passed on to third persons with the addition of the company's extortions, and both borrower and lender gain unearned revenue. Similarly a railroad company may extort excessive income through its transportation monopoly or withhold fair wages from its employees, and after paying interest on all its invested capital, pay dividends on stocks for which nothing was paid and which therefore represent no investment. The unearned interest on unearned wealth, so invested and used, is thus paid by a prosperous company out of funds derived from others. Similar illustrations might be made of the passing on to third persons of the burdens of rent and dividends on stocks. The farther the person who ultimately bears the unjust burden is removed from the ultimate beneficiary of it the more the injustice is obscured and the greater the difficulty in obtaining redress. The real burden in all such cases rests on the consumer or the laborer or both. The vice does not inhere in rent, interest or dividends as such, but in the lack of moral basis for a demand of any payment in any form to the beneficiary. It is because the property from which they are derived is an unjust acquisition rather than that rent, interest and dividends are essentially unjust in their nature.

The inception of title to unearned wealth everywhere is largely due to governmental favoritism, monopoly, speculative operations in which there is an element of fraud, breach of

confidence or extortion, gambling and trade operations having gambling characteristics, and corporate favoritisms and manipulations. Such gains are all clearly immoral, and if full justice were practicable should be returned to the sources from which they were derived. Great gains not infrequently come from fortunate ventures in mining and legitimate trade and manufacturing, and from great inventions. The point at which such accumulations become unwholesome and detrimental to the public interest is not easy to define. Perhaps it may safely be said that this point is not reached until there is an element of monopoly or oppression attending the possession. So long as the use made of them promotes the general welfare there would seem to be no ground for public interference beyond the imposition of taxes. Ownership of land which the owner does not occupy or improve and for which he merely takes ground rent, partakes of the nature of monopoly. The universal need of an abiding place on the face of the earth and of resort to its natural wealth for subsistence renders land monopoly peculiarly oppressive. The safety and permanence of investments in land make them attractive to people having surplus means. Pride also is gratified by the possession of large estates. These influences operate everywhere and the extension of the power of the wealthy by monopoly of the land goes on more rapidly in the United States than in any other great country because the conditions favor rapid accumulation of wealth and there is full liberty to make unlimited investment of profits in land. Monopoly of particular products and lines of business is more noticeable and therefore more discussed, but it lacks the permanence and fundamental character of land monopoly. Monopoly of money and credits, while not impossible, is more difficult of accomplishment. It is always only partial and temporary, but extremely disastrous in its effects.

It is manifest that if property rights were determined by the rules of pure ethics, monopolistic extortion or any sort of fraud or crime would confer no title. If the law-making power were chargeable with the duty to make provision for righting every wrong, it would be necessary to have inquiry



made into the sources of title to all property acquired through any such immoral means and make full restitution to all who had been injured. While it is not to be expected that any system of governmental control will in practice work out ideal justice in every case, it would seem that in theory at least the rules of law should cover the whole field of ethical principles.

The moral law also has its prohibitions and negations and forbids the doing of positive wrongs. The moral law forbids the legislature to promulgate any law the natural effect of which is to produce unfair conditions for or unjust relations between any of the people. Yet the history of the world is full of instances in which the law itself has directly authorized the grossest possible oppression. Slavery has always required the aid of the state in enforcing the dominion of the masters. The state thus became fully responsible for all the immoralities of slavery. The state by its laws determines how title to the face of the earth may be acquired, transferred and enjoyed. The vices of the feudal system, which virtually made the lords of the manors masters and the tenants on their estates slaves, were the vices of the state and perpetuated by its laws. Modern great corporations are mere creatures of the law, called into being by it, and with no power or vitality beyond that given them by the state. They require the active intervention of the courts and officers of the law to protect them in the exercise of their functions. The great land owner requires the strong arm of the law to dispossess tenants who will not comply with his terms. In free America he may drive everybody from his land who will not pay the rent he demands, and in doing this the state is his servant and executes his commands in accordance with the theory of his absolute dominion over so much of the face of the earth as he has lawful title to. Monopolies of all kinds and sorts are either created or allowed by the state, and are always dependent on its protection. The government then is directly responsible for all the wrongs and immoralities authorized by it or which are necessary incidents of them. It can no more escape responsibility for the injustice which results from its laws of property than from that which inheres in the institution of slavery.

The general run of legislative enactments deals merely with details and incidents of the existing system. Fundamentals are seldom considered unless brought to view by some political upheaval. But in dealing with incidents and details the compass and chart of ethical principles should always be looked to for safe guidance in the right direction. Sound morality is not to be confined in the homes or the promulgation of it left exclusively to religious teachers. The legislature is not only itself morally bound to follow ethical principles in all its enactments, but in order "to promote the general welfare" is also charged with the duty to exert its full powers in the dissemination of such principles and procuring the observance of them. Ethical principles are not necessarily rules of cold, hard and gloomy morality, denying all pleasure and requiring mortification of the flesh without reason. They are the rules that bring to humanity the maximum of love, joy and exuberant life, so ordered that these blessings propagate their kind, continue and multiply in all directions.

It may be said that this is the domain of religion and of parental instruction rather than of governmental direction. True religion of course teaches the immutable laws of the Creator, which cannot be other than the living moral law. The most serious objection to religious teaching is that its doctrines are asserted dogmatically, as having divine sanction and admitting no possible errors. Religious establishments are subject to many of the evil influences that affect secular governments. The men who direct their affairs resort to human expedients for their personal gratification and promulgate falsehood and immorality as having divine sanction. The mere claim of divine authority for their teachings results in many places and for long periods of time in precluding inquiry into the truth of them. Fair illustrations of the extreme aberrations of the religious hierarchies are in the sacrifices of the ancient Mexicans, the Druids, the Hindoo sati, the Holy Inquisition of the Church of Rome a few centuries ago with the frightful torture and burning at the stake of innocent men for the fictitious crime of heresy, and the Mo-

hammedan propagation of the word by the sword. Less vicious are the more modern extortions of contributions from needy people to maintain the pomp and magnificence of church establishment, ceremonial and priestly trappings; superstitious awe of beasts, birds and reptiles as in India and ancient Egypt and the worship of idols, images, relics and symbols. With such forms of darkness religious law-givers have obscured the light and beauty of life. The overshadowing fault of all great religious systems is that they constantly claim divine authority and sanction for falsehood and a divine commission to close the door against all searchers for truth.

The responsibility for the good conduct of each individual rests primarily with himself. The ideal state of society is one in which each person of his own accord adheres strictly to the moral law and discharges all his social duties. Whatever the form of government or the system of laws promulgated by the legislative power, the heart and life of society will still depend on the general average of voluntary individual conduct. Wherever there is a general disposition to be just, helpful and cheerful, there will be little need of legislative rules to supplement the moral law. On the other hand, where avarice, hatred and distrust prevail, no governmental supervision can possibly fill the requirement.

#### LEGISLATIVE EXPEDIENTS

The legitimate field of legislative expedients is of vast dimensions and one in which law-makers may still find ample employment after it ceases to be necessary to direct the morals of the people. Where men combine for the common good, it is necessary to determine the form of the combination and the part to be performed by each participant. The national government of the United States is a combination for certain general purposes. The framers of the Constitution dealt mainly, almost exclusively, with questions of expediency in providing instrumentalities to carry out these purposes. They established executive, legislative and judicial agencies to severally perform specific functions. Instead of combining all powers in one man or set of men they divided them so

that each should be a check on the other. They vested the executive power in a president, the legislative power in Congress, and the judicial power in courts. In forming Congress of two houses differently chosen they acted wholly on considerations of expediency. There is no moral question involved in the distribution of the powers of government among the three coördinate branches, but it was deemed wise to do so, mainly because experience had shown that where all the powers were combined, personal interests, ambitions and passions often dictated governmental policy to the public detriment. It was thought that by a division of powers each branch of the government would act as a check on the others to confine them to the performance of the beneficial functions for which they were established. With such a distribution of powers public expediency is deemed more likely to find expression through the public agencies than mere personal expediency. Similar principles were applied in the state constitutions. Acting under these constitutions law-making bodies have established public agencies of various kinds. Most of these are deemed necessary for the public welfare. Some are places created for favorites, and others to promote party, rather than public, ends. Here personal expediency overrides not only public expediency but also the moral law.

As governments slough off their warlike and vindictive functions and take on more beneficent ones, an ever widening field of possible usefulness is presented. As sentiments of hatred diminish and kindness and mutual confidence increase, the necessity for war passes away and men of all countries join in all kinds of religious, charitable, social and business organizations. The law-making power has much concern with great private combinations. In despotic countries they are viewed with suspicion because they may possibly conceal revolutionary schemes. In the United States great business combinations exert undue influence on Congress, state legislatures and administrative officers. The practical question how the beneficial activities of all such combinations can best be preserved and promoted and their evil tendencies curbed

is one of much difficulty. The measure of liberty to be accorded to all citizens in forming combinations for lawful purposes is a question of expediency to be determined by the legislative power. It is also a question of expediency as to how and to what extent their operations should be supervised by the government.

In reference to the useful functions which the state itself should assume as a political organization there is extreme diversity of opinion, ranging all the way from curtailment of the powers now exercised by the government to the schemes of the socialists and communists who would have state management of most or all industries and common ownership of land and capital employed in industries. Shall the state own and operate railroads, telegraphs, telephones, mines, factories, ships, farms, stores, warehouses, banks, waterworks, gas, light, heat and power plants, build dwellings, carry on the business of insurance, maintain hospitals and provide medical treatment for the sick; in fine what and how much if any of the businesses now conducted by private persons ought the state to undertake? These questions have provoked many hot discussions, conflicts and some bloodshed. Men sometimes treat them as involving vital questions of morals. They are in fact mere questions of expediency, experimental in their nature, more or less temporary in character, and reasonably certain of kaleidoscopic changes of aspect. Harmonious concert of action for the accomplishment of desirable ends is the great desideratum. Expediency must find the way for it, not partial selfish expediency, but just public expediency. The moral law applies to all people at all times and under all circumstances. Expediency is special, temporary and must be adapted to conditions. In determining what tasks may safely be assigned to a person it is necessary to know his physical, mental and moral strength, his habits of body and mind, his purposes and desires, the influences with which he is surrounded, the education he has received and every other circumstance likely to affect his conduct. It is possible to utilize men of every grade and kind. The difficulty lies in putting each in his appropriate place and keeping him

there. Concert of action among many implies specialization and leadership. How shall the leaders be chosen? In enterprises conducted by the government they are appointed by public authority or elected by the people. In those carried on by private persons the general rule is that those who furnish the capital determine the plan of organization and make the selection of leaders. In coöperative enterprises those who are served by the organization select their agents and direct their work. The United States now exhibits the greatest business combinations under private management that have ever been known. Ancient Peru affords an illustration of the most advanced governmental direction of industry that we have any account of. Under the despotism of the Incas a people completely isolated from all other civilized nations, without knowledge of letters or the use of iron, without horses or cattle or any of the modern mechanical inventions, tilled the soil, built temples and dwellings, roads, bridges and great stone aqueducts, wove fabrics for clothing and decorations, defended themselves against their savage neighbors and lived in plenty and security. The government was one great business organization in which every officer had useful functions to perform for the general good. All were required to marry, and all were furnished homes and land to till. There were no landlords to collect rent, no usurers to extort interest, no promoters taking anticipated profits of labor, no exploiters monopolizing natural resources. Every one had his share of the land assigned to him each year and his share of the products of the shearing of the flocks, and of the mines and the fisheries. There were no rich living from the labors of others, no paupers, no beggars, no prostitutes. With the added advantages of modern inventions what would they have accomplished and how would they have lived? How much of their system could be successfully adapted to modern conditions under free institutions and among people who deny the divinity of all priestly establishments? If the tie of common brotherhood could be recognized by all in its fullness and entirety the difficulty might vanish, but unfortunately we are now very far from it. We are however rapidly breaking

down the walls of prejudice that have so long separated and antagonized the nations with each other. Already there is a faint perception of a universal bond of human fellowship. The telegraph, telephone, printing press, railroad and steamboat, make near neighbors of the most distant people. Business combinations are not confined within a city, county, state or nation, but some of them are world wide. Men of all races and nationalities unite their efforts in carrying them on. The International Postal Union transports and delivers mail in every part of the civilized world at the least possible expense. This is a purely public expedient, adopted and utilized by the governments of all the nations. It conducts the greatest business enterprise ever organized. The railroads are operated by the governments in some countries and by private corporations in others. In Europe the telegraphs are mostly owned by the government. In the United States they are owned by private monopolies. We have transportation companies, manufacturing and mining companies in great number, among which are many which severally employ tens of thousands of men of all races gathered from all the quarters of the globe. We also have ship yards and other great establishments operated by the government. Our great works in our harbors and rivers are carried on by the government, which also maintains lighthouses and life-saving stations. Public roads and bridges other than those used for railroads are built and maintained by the public. It is needless to multiply illustrations in order to show that great businesses may be carried on successfully either by the state, nation or private combinations. It is sometimes assumed that there is a difference in the nature of the businesses which are successfully carried on by public authorities and of those under private management, but is there any fundamental distinction of kind? Is there in the nature of things an essential difference between the business of transporting and delivering packages weighing an ounce and those weighing one or ten pounds? Is there a fundamental difference between the business carried on in a mail car and that in an express car? Is the business of transporting persons and property essentially different in its nature from that of carry-

ing the mails? Is there an essential difference between the business of building ships for war and that of building them for commercial uses? Is there a difference of kind between the business of casting guns, making armor plate and gun carriages and that of making steel rails and railroad cars? In producing and transporting military supplies of all kinds governments undertake and carry on any branch of business that seems necessary to meet the emergency. Under the pressure of war's exigencies they throw to the wind all nice theories concerning such matters and adopt such expedients and methods as seem best calculated at the time to accomplish the desired results. Is there a fundamental difference between the production of instruments of destruction and of those for beneficial use? Manifestly it is not a question of principle or morals but merely of expediency. It is for the law-making power to adopt whatever plan appears to be the best adapted to accomplish the public purposes.

But what are public purposes as distinguished from private ones? Of late a distinction has been drawn between private businesses affected with a public use and those not so affected. Based on this distinction laws have been enacted providing for the regulation of some businesses affected with a public use, and the power to similarly regulate those not so affected has been denied. The specialization of industry makes all the people of a highly civilized state interdependent. All are dependent on the products of agriculture for subsistence. Restriction of production may mean scarcity, high prices or famine. All are dependent on the manufacturers for clothing and household goods. An abundance at low cost is desired by all consumers. Any combination, regulation or restriction on manufacturing activity that reduces production below the public requirements or artificially advances prices above a just compensation for the service is detrimental to the public interest. All are dependent on the mines for supplies of coal, oil and metals. Mining monopolies through which unearned wealth is extorted from consumers are matters of public concern. It follows that the production of mineral wealth is a matter of general interest calling for legislative



care. All are dependent on the railroads as well as the other highways of commerce, and on the telegraph and telephone as well as the mails for means of inter-communication. Supplies of food clothing and fuel are absolutely dependent on transportation facilities. Where then may a line be drawn between one part of these lines of business and the other distinguishing that affected with a public use from that not so affected? Can such a line be drawn elsewhere than between all the productive activities on the one side and the nonproductive and destructive on the other? Is it possible to eliminate the parasitic classes, which now absorb so much of the products of industry, by fully protecting the useful ones against their methods? Could modern society eliminate its drones and barnacles with as great success as ancient Peru?

The great moral purpose to be kept constantly in view by the law-making power is to bring about a constantly nearing approximation to conditions affording substantial justice between all the people, individually and collectively, and the most ample provision for their physical, mental and moral welfare. Elsewhere than in ancient Peru the conduct of most productive enterprises has always been left under private management for private profit. In recent years business combinations of all kinds, but more especially those engaged in transportation, manufacturing, mining and commerce have taken the form of private corporations. Capital, management, skill and labor are made the bases for the distribution of the gains of the common enterprise, with the result that the burdens and benefits are often most unequally distributed. It is the exclusion from these combinations of all altruistic impulses, the lack of human sympathy, that gives to some of them their cold and steely character. The managing power, the board of directors, is almost universally merely a representative of the stockholders, who have contributed the capital. Neither the employees nor the public have any representation in the management, nor any control over its policy. The employer seems to be the natural manager, and corporations have developed along what appear to be natural lines. It is found, however, that corporations performing functions on

which the public are dependent, and which are either natural or artificial monopolies, may become oppressive, and that owners may ignore not only altruism but justice and decency. When such conditions are presented the legislature is confronted with the practical question of finding an efficient remedy. Will it undertake to supervise and reform the existing system or substitute a new one? Can it convert an oppressive, dishonestly managed corporation into a beneficent, honest one by supervising its operations? Can public agencies be established of superior efficiency in place of the private ones? The modern trend of legislation in the United States is along lines of supervision rather than the direct assumption by the government of new business functions. This is attempted in two ways; by general laws designed to regulate charges for service to the public, imposing duties to be performed and forbidding harmful activities. The enforcement of such laws as to most classes of corporations and as to all classes in most cases is left to the courts by the usual methods. These imply a complaint on the part of the United States or a state for a violation of a penal statute, or of a private suitor for the enforcement of a right or the redress of a wrong. Where the controversy is between a powerful corporation and a private citizen of moderate means results are not satisfactory. The great corporation, by reason of the number of cases brought for and against it, is represented by attorneys and officers who become familiar, sometimes too familiar, with the judges. The private citizen is not ordinarily so represented. Under such circumstances favoritism for the corporation is often charged, especially against judges holding by life tenure. On the other hand juries are more likely to incline toward the private citizen, and elective judges are often charged with seeking popular favor at the expense of unpopular corporations. Though the parties to such controversies are theoretically equal before the law, they are not so in fact. Recognizing the necessity for further interference on behalf of the public, Congress has provided for the inspection and supervision of national banks by the Comptroller of the Currency, and the states have adopted a similar system

of regulating state banks through a bank commissioner. The states also provide a similar supervision of the business of insurance through their insurance departments. More recently Congress has provided the Interstate Commerce Commission for the regulation of the business of common carriers engaged in interstate commerce, and many of the states have similar commissions to supervise such carriers within the state. In a few states the functions of such commissions have been extended over various other public utilities. The functions exercised by these various commissions are usually classed as executive or administrative, but it is found by experience that to be efficient and accomplish satisfactorily the purposes for which they are designed, it is necessary that they should also have other powers generally regarded as legislative and judicial. Numerous acts creating such commissions have been declared unconstitutional on the ground that they combined and confused the powers of the three separate coordinate departments of the government.

The purpose of mentioning these difficulties here is to show the general aspects of the question presented to the law-making power in dealing with great business combinations. The officers and commissions mentioned occupy a position in the governmental systems inferior to the legislative body, inferior to the courts and to the chief executive. The essence of despotism is the combination of all kinds of political power in the same hands without any superior power to prevent abuses. The advantages possible to be derived from the exercise of despotic power are promptness and efficiency. A commission authorized to make rules for the government of great business enterprises and to enforce them summarily is potentially capable of remedying the evils of corporate misconduct. The power merely to make an order which can only be enforced by an executive officer after a trial and judgment of a court of original jurisdiction and a review in an appellate court according to the prevailing system is wholly inefficient for the control of great interests. Courts move altogether too slowly and deliberate quite too long to be efficient in meeting the exigencies of business in this manner. They are however

much more efficient when acting through receivers appointed and removed by them at pleasure. The receiver takes full charge of the business and conducts it in accordance with the orders of the court with the very great advantage of the protection of the court against all outside interference. Courts acting through receivers in fact exercise precisely the same combination of powers deemed unconstitutional in the hands of commissions. If large combined powers are conferred on public agencies the spirit in which such powers will be exercised depends largely on the influences governing the selection of the men chosen for them. It has often happened that the public agents have been chosen by the very interests they were expected to regulate. Under every form of government from absolute despotism to democracy the men directly interested in the exercise of any governmental function are usually the most active and influential in securing the appointment or election of agents to perform such functions. The richer and more powerful the combination of interests to be controlled the greater the influence on the selection of the agents and on their action afterward. It not only may happen but has happened many times that special interests have dictated the policy of one or both branches of Congress and of state legislatures. The law-making power, designed to promote the welfare of all, in fact sometimes promotes the interests of the few at the expense of the many. It is readily apparent that combined powers somewhat despotic in character are potentially most useful, and also susceptible of the greater abuses. Where such powers are to be exercised only in supervising and correcting abuses in one or a few designated lines of business, and where the public agents exercising them are subject to removal by the appointing power at will or after brief terms, the danger of abuse of them is not great. In all cases however they add to the public burdens the salaries and expenses of their offices.

Where the government undertakes to perform new business function through its own agents the element of profit to private investors is eliminated and with it all private management and salaries of private corporate officers. The whole

problem is simplified to the performance of the service and the collection of revenues to pay the expenses of it. The Post Office affords the leading illustration of a continuing great business conducted by the government, and the construction of the Panama Canal of a great public work carried on by public agents at public expense. These functions are exercised by a republic. The pyramids of Egypt, the walls and canals of Babylon and the Chinese wall are instances of vast enterprises carried to completion at public expense under despotisms. The polity of ancient Peru exhibits the possibilities of a despotic government engaged in directing the useful activities of its people as well as its wars. It also shows how a clearly defined general purpose of promoting the general welfare and the systematic inculcation of the principles and knowledge necessary to the accomplishment of it, may overcome most of the evil tendencies of despotism and many of those of popular governments. The great lack in Peru was of private initiative and invention. Freedom to effect voluntary combinations to accomplish lawful purposes is the foundation of modern business progress. The governmental and business organization of the United States and of the leading nations of the east is exceedingly complex, and most complex in the most advanced nations. Does improvement lie in the direction of simplification or of further complications? The moral law, which is always above the legislature, commands the elimination of injustice and wrong and the promotion of the welfare of all. The law-makers must choose the expedients for the accomplishment of these ends.

As the moral responsibility for his acts rests primarily with the individual, so the moral responsibility for the acts of men who combine as a corporation rests primarily with them and the agents they appoint. It is a practical question as to how far the state will take cognizance of the misdeeds and shortcomings of private citizens, and the question concerning private corporations is similar if not identical in principle. It is impossible to remedy all evils. Experience and observation indicate the tasks which are most urgent and which the forces within the command of the state are capable of accomplishing.

A consideration of prime importance is, what measure of integrity and capacity can the state provide for the given task. Theories of organization are highly important, but men with the capacity and disposition to carry them out are indispensable. The evils of autocracy arise mainly from the lack of those moral restraints on the conduct of officials which accountability to the people for their acts would impose. The leading evils connected with the dealings of great corporations are mainly due to the same lack of accountability. Their officers, agents and employees usually find their conduct approved if it results in profit to the owners, without regard to its effects on others. In many cases no harm comes from adherence to this principle, because the corporation itself must struggle for existence and establish its moral character, but in the case of the great monopoly the evil may become unendurable.

Specialization implies interdependence as its inseparable concomitant. Where all the food is raised by one part of the people, all the clothing made by another part, fuel provided by another, and transportation by still another, while yet others minister to special wants in endless detail, it is folly for anyone to regard himself as independent of his fellows. There is not merely the moral bond of common brotherhood but also the material bond of common interest. Not only is there separation into so many diverse lines of industry, but in each of them there are many distinct parts requiring special training, which only those so trained can fill, and the common purpose of all can only be accomplished by the coöperation of many, neither of whom could well perform the task of the other. Each wheel in the great human machine must revolve in its place and each cog must fit in its slot. In such a state of society some of the liberty of the individual must give way to the common needs. While modern combinations result in subordination and in some instances in oppression approximating slavery, and pride, arrogance, wastefulness and ostentation exceeding that of many petty despots, neither of these evils is a necessary incident of concert of action and interdependence of men. They are mainly due to a disregard

of the moral law by those who rule the business. The law-makers are confronted with the task of eliminating these evils and enforcing the observance of the moral law in the apportionment of the burdens and benefits of common undertakings. Civilization is measured far more by the sum total of combined effort and interdependence than by the achievements of individuals acting separately. As it advances changes in the forms of association and in the activities of the combinations must take place. Militarism and all its wasteful and destructive activities is being and must continue to be sloughed off and conserving and productive ones substituted. Legislation with reference to all such combinations must of necessity change with changing conditions. Finality in the form and use of expedients to accomplish legislative or business purposes is neither attainable nor desirable. It is idle to put forth any formula of words as a sure guide for future conditions. Ethical principles have permanence and should be inviolable; expedients are changeable and should have liberty. The beautiful ideal of a state of "liberty, equality and fraternity" is not to be abandoned as utterly worthless because of human imperfections or the savagery of men who have uttered the words without comprehension of their meaning, but the obstacles they interpose to its approximation are to be removed, surmounted or avoided by men to whom it is a guiding light through mazes of difficulty. New and yet untried expedients will continue in the future as they have been in the past to be shorter paths to richer fields. No one man will suggest all of them. The combined judgment of many will continue to be a safer guide in most cases than the separate views of any one.

### JUDICIAL FUNCTIONS

The function of the judiciary is to apply the existing law to specific cases brought to the attention of the court or judicial officer in the prescribed manner. In every well ordered state the rule enforced is assumed to be a pre-existing one. In disposing of a case of controverted right it devolves on the court to, first, determine the basis of fact on which

the controversy arises; second, ascertain what principles of substantive law apply to the question presented by the facts, and third, render such judgment as the law applied to the facts requires. There is very great diversity of methods of doing this, ranging all the way from a summary hearing of the parties before a single judge, followed by an immediate judgment, to the elaborate system of procedure with its long list of technical rules of pleading and procedure and its successive retrials and appeals. Equal diversity has obtained in the constitution of courts and in the treatment of parties and witnesses. Summary methods prevail under despotisms with much disregard of law, and the extreme of prolixity and delay, amounting to substantial incapacity to make final disposition of a complicated case, is not uncommon in a great republic.

The law-making power establishes the courts, fixes their respective jurisdictions and provides how they shall be constituted. In a simple despotism the king is the final judge of all controversies and may exercise his powers in person or through whomsoever he pleases to designate. The first great stride toward liberty is the establishment of a court that is independent of the king, yet bound by the law. A full review of the composition of the diverse courts that have been established in the various countries at different times would be out of place here, but many of them will be found in the succeeding chapters. In English-speaking countries as well as many on the European continent courts of first instance, with power to determine all questions of fact and of law and render final judgment thereon, are made up of one or more judges, having or supposed to have expert knowledge of the law, and a jury of laymen, usually twelve in number. The parties are ordinarily bound to accept the situation and go to trial before the judge assigned to hold the court, but challenges to the jurors are allowed both with and without the assignment of cause therefor. In criminal cases the selection of a jury often causes long delay and great expense, with a net result of great inconvenience and little, if any, good. The aim is to eliminate personal bias and prejudice, which is of course eminently desirable, but the means allowed is ab-



surdly disproportioned to the evil it provides against. Substantially all cases in all courts are conducted by lawyers who are employed and paid by the respective parties. Each of them must have passed the prescribed examination into his legal learning and made the requisite proof of moral character. In the trial of a case he is the champion of his client, and his standing and income are dependent on success in winning cases for those who employ him. Only in prosecutions for public offenses and cases to which the state or some political subdivision of it is a party is an attorney present to represent the public. Every step taken in a cause is under the direction of a lawyer acting either as an advocate or judge, for the judges are all lawyers. While the parties ordinarily have the right to conduct their own cases, they seldom do so if the matter is of much importance. In general all questions of fact are finally determined in the court of first instance having general jurisdiction, or some inferior court. The appellate courts are generally made up of several judges, and rarely have the attendance of a jury. In these courts questions of law only are ordinarily determined. Litigants are by no means sure of a final disposition of their case after the decision of the court of first instance has been reviewed by the highest tribunal to which it can be carried, for in very many of them a new trial in the court of first instance is ordered, and the case is again at the starting point with nothing settled but some proposition of law or procedure. The whole system of courts is required for the discharge of the full judicial functions of the state, but the courts of first instance make final disposition of a great majority of all the causes. The courts of last resort are only called on to decide certain exceptional classes of cases of which they are given original jurisdiction and such as are appealed from the lower courts. In some cases successive appeals from court to court are allowed, so that under certain conditions a case may be heard successively in four or five different grades of court.

It is a fundamental principle of jurisprudence that courts do not take notice of any controversy till it is presented in the prescribed manner by a complaining party. In all but a few

exceptional cases no action can be taken until notice has been given to the adverse party in the manner provided by law. It is a fundamental principle of justice as well as of law that all parties interested in any matter to be determined shall have fair notice of the claim made against them, of the time and place of every hearing in the case, reasonable time and opportunity to attend, procure and produce evidence and present their versions of the facts, the questions involved and the law applicable thereto. These requirements furnish substantially all the basis there is for codes and rules of procedure. The primitive method is for the complaining party to summon his adversary to go with him before the judge, to there state his grievance and ask for redress, and for the defendant to then make his answer, and the judge to decide the matter after hearing the statements of witnesses or not, as appears necessary. There are no written pleadings, no rules of procedure, no lawyers, little if any delay of the hearing and an immediate consideration and decision of the controversy, so that all concerned may act accordingly and go on with their business. This in substance was the procedure in the early days of Rome where the case was tried in the morning and decision required before sundown. It was adapted to a simple state of society. Much of the formalism and prolixity of modern court procedure is due to the complex nature of modern business and modern theories and rules of rights to property. In a case affecting many widely scattered parties it is not possible to take all of them by the arm and lead them before the judge, nor would it be practicable to make an oral statement covering all the claims made against each of them. It is necessary to write it down, so that it will be definite and all may know just what the complaint is. The answer of a defendant may be equally full of details, and it is therefore equally necessary that it be written. This shows the need of written statements of claims, but it does not show any necessity for a long jargon of set phrases to express an idea which might be more clearly understood if written in a few common words, nor for senseless repetitions on a theory that each of a number of causes of action must be fully, technically

and separately set forth. The technical accuracy of statement so strenuously demanded by most American lawyers is palpably absurd. All that serves any real purpose in the statement is the language that notifies the adverse party of the claim made. All elaboration beyond this is surplusage, and all mere jargon, such as is used to embellish bills in equity, is worse than useless. In England, where this extreme technicality in pleadings originated, a sensible system now prevails, and the rules governing equity cases in the federal courts of the United States have just been greatly simplified and improved but in many of the states the ancient forms are still observed.

When a case is before a court with all parties duly notified of its pendency and fair statements made of the claims and defenses of all parties it would seem natural that the regulation of the details of the investigation into the facts and the application of the law should be left to the court and adapted to the situation presented. Instead of doing so in America there are elaborate codes of procedure restricting the joinder of causes of action and of parties, the defenses and counter-claims of the defendants and the manner of conducting the investigation. Numerous positive rules are declared governing the successive steps in the progress of the case and its incidents and ancillary remedies. These rules are treated by the courts as of the same binding force as statutes of substantive law, not only in the trial courts but in the reviewing courts as well. This often results in the decision of cases on mere lawyers' questions, having no connection with the real controversy between the parties, but which have been injected into the case by the lawyers in their efforts to gain advantage from the rules of procedure. The theory on which these rules are established is that they tend to a proper trial and a correct decision. The fallacy lies in the assumption that the rules of procedure are so plain and easily followed that they will be helpful in the investigation. A few simple rules regulating the essential steps in the progress of the case are so, but a multiplicity of complex requirements is a snare which it is difficult to avoid. There is the same likelihood of differ-

ent interpretations of rules of procedure as of rules of substantive law, and every unnecessary positive requirement is sure to result in needless annoyance, delay, expense and injustice. It is not possible to compel right decisions by mere rules of procedure, but it is possible to compel wrong ones, and this is in fact done in an appreciable part of the cases tried in the courts of the United States.

A case being at issue on a disputed question of fact how shall the truth be ascertained? In cases tried by a jury the rule is that the jury answers to the facts and the court to the law, and in other cases the facts are determined either by the judge or a referee appointed by him. Methods of inquiry have been as varied as the human mind can conceive. Some are based on a superstitious belief in divine interposition to protect the innocent and punish the guilty. Such were the ancient English trials by ordeal. There was the fire ordeal performed by a person accused of crime by taking in his hand a piece of red hot iron, or by walking barefoot and blindfold over nine red-hot plowshares laid lengthwise at equal distances. If he escaped unhurt he was adjudged innocent; if hurt guilty. The water ordeal was performed by plunging the bare arm up to the elbow in boiling water, or by throwing the accused into the water. If he was burned in the hot water or floated on the water he was guilty. There was also the ordeal of the scorned, trial by wager of battle and by the defendant waging his law, which he did by swearing to his defense and having his neighbors swear that they believed he told the truth. Similar superstitious tests of truth have been resorted to by many primitive people. In all well organized states both ancient and modern the usual method of ascertaining the facts has been by taking the statements of witnesses. There is very great diversity, however, in the methods of taking the testimony, varying all the way from extracting it by torture on the rack under the Holy Inquisition, or with the bamboo in China, to the mere statement of the witness, uninfluenced by any other consideration than regard for the truth. In most countries a religious oath or admonition of the penalties of perjury is imposed before taking the

testimony. There is no country in which all the people have yet attained sufficient moral strength to entirely eliminate the danger of intentional falsehood. Moral delinquency of this kind varies all the way from the deliberate misstatement of a matter of fact to the mere failure to mention a minor circumstance having some bearing on the issue as to which no pointed question compels a definite answer. Nevertheless an overwhelming majority of all the people of European stock are truth tellers by nature and habit, and in all the ordinary affairs of life in or out of court and with or without an oath their statements can be relied on whenever they are called on for information. A far more common and serious obstacle in the way of determining the facts is the unreliability of the testimony of witnesses due to inaccuracy of observation and expression and defects of memory. These cause witnesses to the same occurrence to give very different accounts of it. Every infirmity in the organs of sense, in mental processes and in knowledge of language and power of expression of the witness is liable to leave its mark on his statements. Passing from the infirmities of witnesses to those of jurors and judges we find that the testimony does not produce the same impression on all of them; and that different ones reason to different conclusions from the same premises. Where witnesses contradict each other, one juror will believe one and another the other. The statement of one may be absolutely true, yet made with hesitation, as if in doubt, while the contradicting statement of the opposing witness may be given promptly and positively. By what token can the juror recognize the truth and detect the falsehood?

These multifarious difficulties in arriving at the truth in judicial investigations have induced the law-makers and courts to adopt an elaborate system of rules of evidence. Some of these absolutely exclude witnesses bearing certain relations to the case or to the parties to it from testifying at all, or limit their testimony to certain exceptional matters. Others require proof of certain facts to be made by a prescribed number of witnesses, or by a certain kind of evidence, as a written document executed in a prescribed manner, a record

made in a particular office or a copy of it made by a designated officer and certified to with the required formalities. Generally the title to land must be established by deeds in due form, but in many cases this is impossible and many exceptions and modifications of the general rule are found necessary to prevent the most palpable injustice. Various contracts are required to be in writing in order to be enforced through the courts, on the theory that frauds will be perpetrated in the absence of the requirement, yet to prevent frauds resulting from the requirement numerous exceptions are made. In England and the United States until very recent times persons charged with crimes were allowed to confess guilt and receive their punishment without other proof, but were not permitted to testify at the trial. Torture to extract confessions of guilt has been and still is a favorite method of getting evidence in many places. What is termed "sweating" is a mild form of torture still resorted to without authority of law in many places by over-zealous police officers. The inherent difficulties in obtaining proof of crimes committed in secret tempt the officers to force the truth from those who know the facts. The torture is inflicted before trial on the assumption that the prisoner is guilty but will not admit it. The law now regards a person charged with crime as innocent until he confesses or is convicted, and in many states he is allowed to testify in his own behalf. As civilization and moral standards advance more reliance is placed on the truthfulness and honesty of parties and witnesses and the arbitrary rules, based on distrust of them, are abolished. Parties were formerly excluded from testifying on the theory that their interest in the case would cause them to lie. Wives were prohibited from testifying for their husbands. These restrictions are still retained in some states, but there is a marked tendency to do away with them and assume that even those most interested in the result of the trial will tell the truth in the great majority of cases. There has also been a corresponding relaxation of the rules relating to the reception of private account books and other private writings as evidence. While there has been and still is ample basis for

distrust in particular cases, it may well be doubted whether arbitrary rules excluding witnesses from testifying in any case tend in the right direction. The credibility of witnesses may well be affected by the considerations which have caused their exclusion, but it is grossly unjust to assume that all people will resort to falsehood to further their own interests or that a majority of them will do so. The natural obstacles in the way of the judicial search for truth cannot be removed by closing the doors to any place where it may be found. Arbitrary rules may prohibit its discovery, but cannot promote it.

The controversy may be merely as to the facts, or as to the law, or as to both facts and law. Where the facts only are controverted and the parties are agreed as to the law applicable to them, the verdict of the jury or findings of fact by the court are followed by such judgment as they warrant. Where the parties disagree as to what the rules of substantive law are, or as to which of several acknowledged rules applies to the facts as found or admitted, it is the province of the court to declare what the law is and which of its rules apply to the controversy. Where shall the judge look for a clear statement of the law? In China to the Penal Code, in India to the Code of Manu, in all Mohammedan countries to the Koran, in continental Europe to the compilations of Roman law made under Justinian and the modifications of it made by the law-making power of the particular nation, in England to the acts of Parliament and the reported decisions of the courts construing them or declaring the rules of the common law, and in the United States to the federal and state constitutions, to the acts of Congress and of the state legislatures, and to the decisions of the courts construing them and declaring the common law. There is not now and never has been in any country a code of written laws so plain in its terms as to be self-explanatory, or which provided rules directly applicable to every question presented to the courts for decision. The Koran, which perhaps has higher authority among Mohammedans than the code of any other people has with them, contains so few and meager rules that

the judicial officers are forced to supplement them with others which they deem in accord with the spirit of the Koran. The wisdom of the prophet was not adequate to the future developments of Mohammedan civilization. So it is with every code of laws, no matter how wise the author of it may be or how great his authority. Advancing and receding civilization each present new forms of human relation, activity and combination, new fields of enterprise and new forms of property. Old customs give way to new ones, and old standards of morality are superseded by better ones. Progress means change in the forms and purposes of human activity, and the law, which is merely the expression of legislative will or established custom, always lags behind the advanced thought of any age.

In the United States the courts have to deal with many kinds of law emanating from different sources, and to determine which has controlling force in the case under consideration. The constitution of the United States is the supreme law to all courts, but its field is relatively very small and it affords rules to solve only a very few of the great number of questions to be answered. Acts of Congress passed under its authority rank next. The constitution of the state in which the court sits is next in authority. Most of the state constitutions cover more ground and are of more frequent application than the Federal Constitution. Acts of the state legislature which do not conflict with either state or national constitution or a valid act of Congress come next and cover a much wider field. While the whole volume of written law contained in constitutions and statutes is much smaller than that of the unwritten common law, it is within the power of the state legislatures to cover as much or as little of the field by statutes as they see fit. The task of ascertaining what the written law is is often one of great difficulty, owing to different enactments made at different times, under different circumstances and for different purposes, which overlap and conflict as to details. In addition to the constitutional and statutory law there are treaties between nations having the effect of law, and the unwritten principles of in-



ternational and admiralty law. Below all the foregoing there are municipal ordinances operative as local laws, and the by-laws of corporations and associations binding on their members. While the common law is spoken of as the unwritten law, it is looked for in printed books of reports of decisions of the courts in which its doctrines are discussed in endless detail and numberless cases. These cases are of various grades of authority and persuasive reasoning. Decisions of the Supreme Court of the United States are binding on all courts in their construction of the Constitution of the United States and acts of Congress passed thereunder and as to all matters within its special province, but its answer to any question as to what the rules of the common law are have merely the persuasive force of the opinion of the highest court in the land. Similarly the decisions of the highest court of a state as to the law of the state, written or unwritten, is binding on all inferior tribunals of the state. The leading purpose of the people in providing reviewing courts is to procure and preserve uniformity of construction of statutes and constitutions, and uniform declarations of the rules of the unwritten law. It sometimes happens that the Supreme Court changes its views as to the rules of law and either overrules or ignores its own prior decision. This of course introduces confusion instead of preserving uniformity. When a prior decision is pointedly declared to have been a misstatement of the law and distinctly overruled lawyers and inferior courts may accept the last decision with a fair degree of assurance that the rule last announced will be adhered to in the future, but when a prior decision is merely ignored without comment confusion and uncertainty inevitably follow, for nobody can tell which precedent will be followed in the next case. Questions sometimes arise which have not been decided by the court of highest authority over the trial court. Resort is then had to the decisions of courts of other states for guidance. It sometimes happens that the court of one state resolves the doubt one way and another the other. Sometimes the courts of different states are about equally divided in number on each side, and sometimes the less number appear to be the best authorities.

With all this multiplicity of sources of the law is it strange that courts of first instance, which have to deal with both the facts and the law are sometimes reversed by the reviewing courts? If mere complexity of the laws is an index of civilization, the United States is a highly civilized country. The publication of reports of the decisions of the reviewing courts goes on at the rate of something like two hundred volumes a year, and the number steadily increases. That there are so many is of itself some proof that the law is in an unsettled state. The truth is that the modern tendency to refinement and nice distinction has so obscured many wholesome general principles that the rule itself can no longer be applied with any fair degree of certainty or uniformity and is therefore thrown aside and one or another exception followed. It is manifest that the present system will ultimately fall of its own weight. Much of the public dissatisfaction with the methods of the courts and the delays and expense of litigation is chargeable, to the impossibility of a full consideration of the law in the trial courts. The trial judge can make only a cursory examination of authorities bearing on a nicely balanced question, while the reviewing court proceeds with great deliberation, and feels called on to state and apply the law with the utmost accuracy. Notwithstanding the vast accumulation of recorded precedents, new inventions, new combinations and new forms of contracts are presenting new questions to the courts. Though broad general principles may apply, the habit of seeking for identical precedents has become so fixed that courts hesitate to apply broad principles without the support of precedents of like cases. This extreme nicety leads rather to confusion than to certainty. Ordinarily the general principles are better guides and more easily followed than the similar precedents. In theory there is and always has been a rule of law applicable to and decisive of every controversy, else cases might arise which could not be determined. The judge must find a rule, whether it has ever been announced or not. This is true in all countries and at all times.

If every disagreement were submitted to the courts under the existing elaborate system they would be overwhelmed with

such a mass of litigation that it would be utterly impossible to dispose of it. As it is the judicial mills are so full in many places that long delays amounting to a substantial denial of justice are inevitable. Fortunately the people themselves adjust most of their differences without resort to the courts. Business is so conducted that but a very small part of the numberless transactions of commerce and employment give rise to any dispute. The parties to them frequently agree on terms and adjustments of their affairs quite different from what the law would impose. The moral law, views of justice and fairness often induce one to give more than the law requires or the other party asks, or to accept less than such amount. As moral standards advance and altruistic impulses increase necessity for the exercise of judicial functions diminishes.

While the courts could do much to overcome the difficulties above outlined by improvement of their own methods, comprehensive reforms can only be effected by the legislative power. Many branches of the law admit of world wide uniformity, while others are of necessity local. The law of the high seas, which no nation owns, must be common to the navigators of all nations. The rules of commerce are susceptible of substantial uniformity, and the law of personal relations, though so long and grossly unjust, ought to be uniformly just throughout the world. Slavery has already met the condemnation of all civilized people, and all other forms of oppressive personal relations must give way to moral progress. Titles to land and rights of occupancy of it must of necessity be dependent in some measure on local conditions of soil, climate, market and pressure of population. The purposes, forms and extent of industrial and commercial combinations will always depend in some degree on such conditions and also on the habits, capacity and character of the population. There are already beginnings of a common law of the world, the principles of which are recognized by all civilized nations. With an advancing recognition of moral standards it becomes apparent that the relations of nations however distant and dissimilar should be regulated by law, and also that the law

should be just. World wide reforms having the effect of amendments of the law of nations are being made through the instrumentality of conferences at the Hague and elsewhere of representatives of the nations, by treaties between different powers, and yet more by the dissemination of the principles of morality. Legislative bodies in all parts of the earth now take some notice of the laws of distant nations and shape their own acts with some reference to the light they get from abroad. The most marked evil tendency resulting from the imitation of foreign examples is in the drift of the peaceful nations of the east toward the vicious militarism of the west, but it seems reasonably certain that this evil will correct itself in the near future, and that the universal law will be a steady approximation toward the moral law.

The evil of an unwieldy body of precedents, similar to that with which we are afflicted in the United States, existed in the Roman Empire in the time of Justinian, and was then met by a general codification. This remedy could be applied with comparative ease under an autocrat, but with legislative powers apportioned between Congress and forty-eight state legislatures the practical difficulties appear almost insurmountable. A start toward uniformity throughout the states has been made through the influence of the American Bar Association and the Commissioners on Uniform State Laws, but anything approximating a general codification of the whole body of the law throughout the Union is not yet even foreshadowed. Manifestly the widest practicable uniformity is eminently desirable. The obstacles to intercourse between residents of different parts of the country interposed by time and distance have been largely eliminated by modern inventions. The obstacles interposed by diverse laws can be eliminated by uniformity. The process by which this may be promoted is foreshadowed by the start already made by the Commissioners, taking one topic at a time and devoting ample time to it. More rapid progress might be made if the Commissioners had more general recognition throughout the states and sufficient financial support to enable them to devote the necessary time to the work. In a period of invention and

rapid changes of social, industrial and commercial combinations, a rigid code, purporting to cover the whole field of the law for the future, is neither practicable nor desirable, but it is possible and eminently desirable to codify those branches that admit of complete uniformity, like commercial law, and that wherever moral principles are involved in the law on any subject the closest possible approximation to the just rule should be adopted and given the most ample application.

The states acting separately may make substantial progress in simplifying the laws of local application by codification by topic of these subjects. Of course all uniform state laws, however formulated, would only become effective on their adoption by the state legislature and would appear in the statute books merely as laws of the state. The value of a codification would be dependent in some measure on the degree of permanence attaching to the rules contained in it, but it has the advantage of classification and orderly arrangement, and tends to clearness in case of subsequent amendments. These are matters of great importance in simplifying the labors of the judge. When the rules of substantive law are scattered through numberless volumes under all sorts of classification and headings, he can never know that his investigation has quite covered the whole subject. With a complete codification of any topic he might feel a fair degree of assurance that he had all the law he required before him. After the best possible codification of existing law has been made there will still remain the experimental field of new subjects and radical changes of old ones, of new public enterprises and new private schemes requiring regulation.

All questions of fact and of law which are determined by the judges are resolved by the opinion of the majority of them, but in most states the determination of a question of fact by a jury of twelve requires the concurrence of all. This is most illogical and productive of great expense, inconvenience and delay in a considerable part of the difficult cases. In criminal cases subjecting a defendant to vindictive punishment it is merciful to require unanimity, but in civil cases the concurrence of three-fourths is ample, and it would be equally

safe in criminal cases prosecuted with a view to the welfare of the defendant as well as the public.

In many states new trials of all the issues are granted for reasons affecting only one or more of them. Where this is done the first trial goes for nothing, when logically it should settle all issues as to which there has been a fair and full trial and clear finding.

Successive appeals ought not to be allowed in any case. The evil consequences of them far outweigh the general benefit.

Questions as to the constitutionality of statutes ought to be settled in advance of the private litigation under them, and in a proceeding in which the public is represented. It causes contempt of the legislative authority to require private citizens to determine for themselves when an act of Congress or a state legislature is valid, and, having acted in the belief that it is valid, to be called on to defend it through a series of courts and suffer loss at the end because the court of last resort holds it invalid.

The new constitution of Poland prohibits the courts from inquiring into the validity of a duly promulgated statute, and the constitution of Czecho-Slovakia provides for a constitutional court to pass on the validity of statutes.

#### EXECUTIVE FUNCTIONS

In the evolution of government from chaotic liberty the first function to be developed is the executive. It is usually exercised in leading war parties, hunting or fishing expeditions, and in such manner as accords with the character, customs and purposes of the tribe. Combined with it are such crude beginnings of legislative and judicial functions as the situation requires, all assumed ordinarily by a single leader. The next function taking separate form is the legislative, usually exercised by a general council of the tribe or the elders or heads of families in it. Representative legislative bodies chosen by the people are a very late development of advanced civilization. Judicial functions are exercised by the king in person in a small despotism, and in larger ones by persons appointed

by him to act in his stead. The Greeks and Romans give us the earliest known well defined division of powers among the three departments of government. This division now obtains throughout Europe as well as America, and is being extended into Asia. The separation of executive, legislative and judicial functions is nowhere complete. In most monarchical countries the chief executive officers under the crown take the initiative in the most important legislation and have a voice in the deliberations of the Parliament, and all laws require the approval of the king. In Great Britain the ministry exercise the executive functions with no substantial interference from the king. They are always in accord with the majority in Parliament, for whenever they cease to be so a new cabinet is formed and the House of Commons is usually dissolved and new members elected. In all countries, where there is a separation of executive and legislative powers, it is necessary that the executive departments report to the legislative the needs of the public service and submit estimates of the moneys required for each and the requirements of men for military, naval and civil service.

In the United States the president and the governors of the states make recommendations respectively to Congress and to the legislatures through written messages, but are not allowed to take any part in their deliberations; nor are any other executive officers entitled to do so. The President has a veto on acts of Congress, but this may be overridden by a vote of two-thirds of each house and the law enacted without his sanction. Similar rules apply to the governors and state legislatures. The influence of the chief executive under the system of political parties which has prevailed from early times depends on whether his party is in the majority in the two houses of Congress, or the legislature of his state. When the executive is in political accord with the majority in both houses his influence is usually very potent in shaping legislation; when he is not his influence over appropriations of money may still be great through estimates of the public needs, but as to other matters of legislation it may be very small. In this particular the system is lacking in efficiency and ultra conservative.

While judicial power has been taken away from chief executives in all civilized nations, the appointment of the judges is still a function of the chief executive in Europe, and for the federal courts in the United States and the state courts of some of the states. In others they are chosen by the legislature, but in most of the states they are now elected by the people. The judicial function of trying impeachments of presidents and other civil officers of the United States, including judges of the federal courts, is vested in the senate of the United States, and of the governors and other state officers in the state senates. Impeachment by charges preferred by the lower legislative body and tried by the upper is not an efficient method of punishing public officers for misfeasance in office. It may be wise to have so conservative a remedy in the case of the president and vice-president, but as to all other officers it is an impracticable scheme.

The executive head of every country, by whatever name he may be called, is always commander in chief of the army and navy and the representative of the nation in all dealings with foreign nations. All civil as well as military officers, except such as are made elective by the legislature or by popular vote, are also appointed by the chief executive. While the law-making power levies the taxes and gives general directions for its appropriation, it is the executive officers who collect the money and use it. By reason of its control of appointments to office, of the expenditure of public funds and its daily contact with the people in the transaction of the public business, the executive department exerts a powerful influence both on the legislative department and public sentiment. Theoretically in the United States it is subject to the direction of the legislative and judicial branches of the government acting within their respective spheres. It is subject to the laws, and executive officers are bound to carry the judgments of the courts into execution. They are liable to trial and punishment by the courts for their violations of law and duty, and in some instances in some of the states to removal from office by them. The vast executive powers of the general government of the United States are concentrated in the



President. The heads of the executive departments are appointed by him and are his advisers, but they hold office during his pleasure only, and he has power to remove them and appoint others at will. The states have a far less forceful executive head. In most of them the chief executive officers other than the governor are also elected by the people, and are not subject to removal by him. The greatly superior efficiency of the federal plan has not yet induced the states to model their executive departments after it.

In the discharge of executive duties it often becomes necessary to determine questions of fact preliminary to the performance of a duty. This the executive officer who is called on to act does summarily in his own way, usually without any formal trial. Perhaps the most important instances occur in matters affecting the friendly relations of the country with a foreign power. The protection of citizens temporarily in foreign states frequently makes it necessary to inquire into transactions occurring in remote parts of the earth. In exercising the pardoning power an inquiry into the character and conduct of the applicant for mercy closely analogous to a judicial trial of a question of fact is necessary, though the proceeding is wholly discretionary with the executive in most states and countries.

The moral progress of the world is exhibited by the steady and rapid evolution of executive departments into agencies for the discharge of useful peaceful functions, and the tendency to slough off the baneful military activities. While inventions of destructive agents and instruments have kept pace with the inventions of useful ones, and while the nations still waste their energies, their substance and their men in needless and vicious armaments and war preparations, the utter immorality of aggressive wars is recognized, and the executives of all advanced states feel the restraining influences of an advancing morality which condemns war.

#### CHECKS AND BALANCES OF GOVERNMENTAL POWERS

Much has been said by writers on political economy in commendation of the plan of restraining each branch of the government within its useful field by placing a countervailing

power in another branch, and there can be no doubt of the value of such balances of power. Nevertheless the ultimate effective checks must always remain with the general body of citizens and be kept alive by education and an active public sentiment; else they soon lose all potency. The true theory of all official power is that of agency to do particular things, not of a general agency subject only to a few special limitations. The balancing of powers by constituting different agencies to act as checks on each other has been tried often and in a great variety of ways, but nowhere with ideal results. The Chinese imperial system, so far as all officers under the emperor were concerned, was based on this idea, but corruption and inefficiency were the rule rather than the exception. Rome set tribunes against consuls and massed *plebs* against *patres*, yet the senate continued to rule till overawed by the legions under military leaders. A government of limited powers exercised for short periods by persons taken from and returned to the general mass of citizens is least dangerous to liberty. The objections to it are lack of continuity of purpose and efficiency. In a country where ignorance and immorality prevail these objections are valid. Liberty and order are impossible without self-restraint exercised voluntarily by the great majority of the people. Education is by all odds the most potent factor in maintaining any governmental system. This is more clearly illustrated by the Asiatic governments than by the European, where illiteracy has prevailed until very recent times with the exception of the Greek and Roman periods. A definite system of education in law, religion and social organization, enforced as a divine ordinance, has moulded the character of all Hindoo society for thousands of years. The Mohammedan system has been similarly propagated. The Chinese books and teachers have played an equally important part in preserving the peculiar institutions of that country and securing obedience to much that appears to Europeans as unqualifiedly bad. Europe and America have also been greatly influenced by the teachings of the Bible, also of Asiatic origin, which have been accepted as religious truth, but not as a guide in the formation of governments, or a sys-

tem of laws to be administered in the courts. In this it will be seen that the use of the Bible as a sacred book is somewhat anomalous, for the Koran and the Code of Manu are of the highest authority as books of law in all courts where their religious authority is accepted. The morals of the Old Testament are discarded as too low for this age. The Christian conception of universal love for all humanity indicates the ideal social condition, without elaborating the details of the application of it to the particulars of human conduct. Love as a passion is not universal, but partial, responding to influences not always readily comprehended. Though capable of stimulation by education, its mainspring rests in the seat of the emotions of the person. The heart responds to impulses that no one can wholly control. If all could be induced to act as love for each and all would dictate, the destructive and corrective functions of government would be eliminated at once, for there would be nothing left on which to act. Wars would cease, and those who now commit crimes would be wholly absorbed in harmless activities, beneficial to themselves or to others. Government in its sinister, meddling and cruel sense might at once be dispensed with. But this would not do away with the necessity for social organization. Great numbers cannot act in concert for their mutual benefit without rules governing the conduct of each and an apportionment of duties. Schools for the instruction of all in the rudiments of letters, science and the arts and special instruction for each to qualify him for his particular part in life will always be necessary. Until the ideal Christian spirit is universal it will continue to be necessary for the people to guard against abuses of governmental powers. The idea of official checks balancing each other is based on the theory of a governmental force above the people. Unless those for whom powers are exercised are capable of approving or condemning the acts of their agents according to their merits, it is idle to expect one set of officials to protect the people effectively against another. It is quite too easy for the two sets, chosen to watch each other, to combine for their common advantage against the general public. History is full of such combinations in the United States as well as in China.

## GENERAL PURPOSES OF GOVERNMENT

The central idea of government is an organization through which the combined force of many may be exerted. The objects to be accomplished by the use of this force may be beneficial to all, to a few or to one alone, and they may benefit all or a part, but in unequal degrees. Where the government takes the form of an unlimited monarchy, the ruler has the power to take for himself and his favorites all of the benefits, and to place all of the burdens on the multitude. The monarch may desire the general welfare of his subjects, and may promote it in some ways, but the maintenance of his authority is dependent on suppressing popular impulses in public affairs. The average man magnifies his own merits and importance and minimizes those of others. He also sympathizes most with those near him. So it inevitably comes about in a despotism that the monarch and his favorites engross the benefits of the state's power, and by a law of moral compensation the excessive advantages enjoyed curse the favorites with low moral standards and such consequences as naturally result from them. Where the form of the government is that of an aristocracy, the beneficiaries may be more numerous, though not necessarily so. Where they act in concert the result is much the same as in the case of the despotism, but there are more heads to be gratified, and the rapacity of each is liable to encounter some resistance from the others. The proletariat are still without power to enforce their rights. In popular governments the theory is that powers are delegated to public servants, to be used for the benefit of all, and that the benefits and burdens of government are impartially distributed. An art, however, corresponding to that of the courtiers, develops in the republic, and through specious pretexts crafty men employ the powers of the state for their own enrichment in different ways, but with results similar to those of the courtier's fawnings. The form of the government does not eliminate the disposition to be unjust, nor are the balances of powers so adjusted as to enable the many who bear the burdens to effectually curb the rapacity of those who gain un-

merited favors from legislatures, courts and administrative officers. Arbitrary laws sanctioning slavery, land monopoly, and special privileges in trade, transportation, manufacturing, mining and supplying various needs of the public, work out systems of favoritism and oppression. These are aside from the direct exercises of the powers of the government for the enrichment of the officials and their friends. Even in the best ordered republic the taxing power is exercised to some extent merely to favor a few persons.

The prudent individual seeks to mark out for himself a line of conduct reaching through some or all of the balance of his life, which he believes will conduce to his future welfare. He does best who follows a course which tends to continually make him stronger, better and happier. Close observance of the moral law and of every precept of it will generally tend to a long life of increasing enjoyment. Neglect of the needs of the body induces weakness and disease, neglect of the mind, ignorance and dependence; idleness and wastefulness poverty; hatred and envy, enmity and suffering. On the other hand the performance of every duty to himself and to others tends to health, prosperity and happiness. The rules by which the individual governs his own conduct are the product of his education, environment and native mental force. He may observe them steadily or spasmodically with corresponding results, but death ends the accessible record of success, failure, pleasure and pain. The state seeks to direct the destinies of many people. Its legitimate object is essentially similar to that of the private person, that is to promote the welfare and increase the happiness of its citizens, but it has no fixed limit of numbers of persons affected or duration of its influence. To accomplish this result it must cause the observance by the people of those rules of conduct which tend to propagate conditions favorable to human happiness, and to eliminate conduct destructive in its tendencies. The state looks not merely to the welfare of persons now living, but of the race in future generations. Its rules therefore must have a wider range of present application and look forward to more remote consequences. Though immoral conduct may appear profitable for

short periods and to a limited class, time surely discloses its destructiveness. Bentham's test of utility, given general application to all alike and carried to its remote consequences, is a test of morality. His measurement of utility by the pleasure or pain produced may admit of more doubt, for the dividing line between sensations of pleasure and of pain is often incapable of ascertainment, and disagreeable sensation seem essential to our vital processes. Life, health, strength, knowledge, beauty, abundance of usable things, the love of friends and good will of all, are generally regarded as desirable. There are certain lines of conduct that tend to produce and preserve these blessings. There are others that prove destructive of them. It would seem that the legitimate function of the state is to search out and declare as substantive law what rules of conduct are beneficial in their tendencies, and what are destructive, and to devise governmental machinery designed to induce observance of the former and avoidance of the latter, and that moral improvement and material advancement should continually accrue as the product of legislative wisdom and foresight. To what extent such functions have been recognized and exercised by the governments of the leading nations of the earth is one of the main subjects of our inquiry. It will be found that the organized forces of society, especially in the hands of a single ruler, are often exerted to destroy, rather than to build up, and that all the nations of the earth look to armies and navies as means of gain and preservation, rather than to the cultivation of those firm bonds of friendship which are indispensable to peaceful relations.

The rule of progress is good for evil, kindness to overcome hatred. Viewed merely as a cold and passionless artificial being, the true mission of the state is, and always must be, to keep people from harming each other, and to lead them to move in concord in the accomplishment of purposes beneficial to all. If all were fully employed in moral pursuits, crime would disappear as a necessary result.

Selfishness has its root in our natures, and care for self is a moral duty. Care for our progeny is both a privilege and a duty, and affords one of the most powerful incentives

to the accumulation of wealth and mastery over others. In the struggle to gain these many parents fail to comprehend the relative value of mere inherited wealth and of favorable conditions for their children to live natural useful lives. It is only when we clearly perceive that the welfare of our progeny is inevitably locked with that of the descendants of our neighbors, and that the only safety for any lies in high moral standards, justice to all, and the growth and extension of kindness both as a sentiment and a recognized rule of conduct, essential to human happiness, that it is possible to make the best provision for future generations. Instead of starting life with great wealth and a contempt for useful labor, it is far better for any normal healthy child to be trained to do his part and bear his share of the burdens of life, and taught that the largest and best life is that which accomplishes most for the good of others.

Not to destroy enemies by war, but to destroy enmity by kindness and friendly intercourse; not to punish criminals, but to eliminate crime by inducing right conduct; not to force the unwilling performance of duty, but to lead men to voluntarily follow high moral standards for the joy of well doing; not to enforce obedience to the arbitrary will of rulers, but to induce the acceptance of such direction as is essential to concert of action; not to stifle individual liberty, but to encourage and protect in all worthy efforts and enterprises, are the ideal purposes of governments and laws. How the nations of the earth have been afflicted with ignorance of these fundamental truths, how those in authority have disregarded them, and how the people have suffered by reason thereof, we shall see in our brief review of the rise and fall of states, and the principles by which they have been governed.

## CHAPTER I

### UNORGANIZED TRIBES

In the lowest social state we find individual liberty wholly unrestrained. The weak and despicable Digger Indians, dwelling in rocky and desert places, feeding on the most disgusting fare, though they have chiefs in accordance with the customs of the more vigorous branches of the Utah family, recognize no authority in them, and each individual follows the dictates of his own torpid will.

The lower Californians did not differ greatly from the Diggers in modes of life, though living under more favorable surroundings and exhibiting more providence in the manufacture of weapons and utensils. With well formed and vigorous bodies and not wanting in courage, they lived without habitations, government or laws and paired off at pleasure without a conception of the marriage relation. The Yaghans of Tierra Del Fuego, living in a most inhospitable clime and under circumstances rendering concert of action indispensable to even a small degree of comfort, yet dwell apart, each family by itself, naked and without shelter, recognizing neither chief nor laws and feeding on their own kind.

The Eskimos on the inhospitable shore of the Arctic Ocean, though far superior in industry, intelligence and nearly everything else, except cleanliness, are also said to recognize no authority. Probably this is due to the necessity for living in very small villages, owing to the barrenness of the country and the peculiar climatic conditions under which they live. The long night of winter prevents intercourse with others living at a distance and effectually isolates each group. During the brief but busy summer, hunting and fishing occupy their attention. For this concert of action in great numbers is not advantageous. More can be accomplished by separating than by combining. Isolated from the balance of the



world and having little to excite the cupidity of others, they are not often forced to fight, but they are reputed courageous and vigorous when put to the test.

It appears that life in the hunter or fisher state tends to individuality and the absence of social organization. It is believed that no instance can be cited of a race of people, living exclusively from hunting or fishing and the spontaneous products of the earth, that has passed the stage of simple tribal organization. Though the civilized man can readily perceive the advantages that might accrue to them from concert of action, conditions are not such as to develop it, and probably, if once developed, any form of extensive organization would soon fall in pieces without a marked change in the habits of the people. Among the very lowest promiscuous intercourse is the rule, and the whole burden of rearing the young is cast on the mother. In a great majority of instances, where a permanent relation is recognized as existing between the man and woman, the latter is treated as a slave and forced to bear his burdens as well as her own and those of her offspring.<sup>1</sup>

The natives of Australia appear to have been below the average of the American Indians in most respects. It is said that they did not till the soil at all, their habitations were of the most crude and temporary character, being mostly of bark or brush. In the manufacture of weapons and implements they exhibited little skill or ingenuity, having no knowledge of metals or skill in weaving fabrics. They did not know the use of the bow and arrow, the almost universal weapon of primitive man, yet the boomerang, a most curious invention unknown elsewhere, is their peculiar weapon. In government they do not appear to have ever advanced beyond the tribal stage, with very little power in their chiefs. As with most savages the women are oppressed and enslaved by the men and family ties are very weak.

In attempting a close study of the development of the first

<sup>1</sup> For a more full statement of the various customs concerning the relations of the sexes see Brissaud's "History of French Private Law." Continental Legal History Series, Vol. 3, p. 1.

steps toward the formation of a government, we are met by a surprising complication of difficulties. Savage tribes can furnish no accurate history of their own development. The moment they are brought into close contact with superior people, the course of their development is affected to a greater or less degree by the extraneous influences to which they are subjected. Habits of life, fashions in dress and modes of warfare are quickly adapted to new conditions. Thus in America those who describe the Comanche Indian place him on horseback, though the horse was first brought here by the white man. Blankets and beads were worn by the natives of the eastern and middle states long before the revolutionary war, and a description of an Indian costume without them was hardly complete, though the material came from Europe. Guns and knives soon supplanted bows and tomahawks. Again the wars and migrations of tribes, the changing conditions and vicissitudes under which they lived, afford no opportunity to study a continuing development of a particular tribe or nation.

Few if any American Indians can now be found whose character, customs and even tribal organizations have not been changed and moulded by the influence of the whites. Those that have remained near their ancestral homes have little left of the character or habits of their wild ancestors. Those that have been removed to western reservations have also felt the effects of the teachings and examples of the whites, often to their destruction. This frequent and extreme subjection to vicissitudes is, however, a characteristic of the savage state, and no one need ever hope for an opportunity to calmly study the development of any savage people, uncontaminated by contact with more civilized people for many consecutive generations. The reason for this is plain. Steady development demands steady conditions. Not only were the Indian tribes subject to destruction at the hands of their enemies, but their indolence and improvidence left them constantly liable to famine, which often depopulated their villages.

The rudimentary society is always domestic in character, but usually it is the rule of the strong male over the female

slave. In all quarters of the globe warlike savages have been accustomed to enslave prisoners whom they did not kill. Yet the custom of adopting even prisoners of war to whom the captor chances to take a liking is not uncommon. This was the settled policy of the Iroquois and a great source of strength. The slavery is generally temporary in character, resulting soon in death or emancipation of the slave. The habits of life of the savage are not such as to admit of the propagation and preservation of a servile race. In our efforts to generalize the earliest appearances of social organization, we are liable to take up a preconceived theory and proceed with a smooth and logical narration of orderly development. But, when we attempt to cite authorities and demonstrate the correctness of our theories from known instances, we are met with innumerable perplexities and apparent contradictions. Observers who are ignorant of the language of the people they attempt to describe often give most unsatisfactory accounts. They report what they see and often fill out their descriptions with what they infer to be true. But as we proceed we shall find that these difficulties attend the study of the development of governments in all forms and stages in a marked degree, and that the human capacity and desire to choose and invent leads to most perplexing want of uniformity in the development of social order. While the earliest form of mastery and rulership of a permanent character appears to be domestic and a personal mastery of one over another, the next step generally has its foundation in war.

Under conditions of isolation it is possible for a tribe to make much progress in industry without developing a governmental system.

The Ifugaos, a head-hunting tribe classed as of Malay stock, inhabiting a mountainous district of northern Luzon, numbering about 120,000, have no trace of political, judicial or priestly government, yet have constructed and maintained from remote antiquity the most extensive and admirable system of mountain terraces for rice culture to be found anywhere in the world, the one in the Benue valley being 12 kilometers long without a break with some of the terrace walls 60 feet high,

and that in the Asin valley having 110 rows of terraces from the river to the top. These terraced fields are irrigated from the mountain streams and cultivated with great industry and skill. They are not tribal property, but privately owned in unequal parts, some members of the tribe being rich and others poor. Though they have no written language, rights to property and domestic relations are regulated by a fairly complete set of customary laws and taboos, transmitted orally from generation to generation. Penalties are also imposed for various offenses. For their enforcement these laws are dependent on the general sentiment of the people and the active force of the family of the injured or offended party. The nearest approach to an official is the go-between, who undertakes by negotiation, persuasion or threats to bring about the settlement of such controversies as he is called on to deal with. In the last resort the family of the wronged party uses the spear, but it is said that loss of life by violence of all descriptions is not nearly so great as among the people of the United States.

The surprising thing about these people is that with so much industry, thrift and private wealth as they have, they are, and so far as known always have been, without any governmental machinery to protect owners in their property rights. The general rule the world over seems to be that some form of governmental protection goes along with private wealth. This tribe proves that the laws of an isolated tribe, generally known and understood by the people, may regulate their social and property rights without the aid of courts or other governmental machinery. Laws like many of our municipal regulations, which are neither known to or observed by the people generally, are of very doubtful value, however much governmental machinery may be devised for their enforcement.<sup>1</sup>

#### *Authorities*

Bancroft: Native Races of the Pacific States.

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<sup>1</sup> Ifugao Law, Barton, University of California Press.

## CHAPTER II

### TRIBAL ORGANIZATIONS AND SIMPLE DESPOTISMS

Passing from our imperfect view of the most low and repulsive specimens of human beings to those possessing more intelligence and exhibiting tendencies toward social organizations, we find everywhere that customs, superstitions and fashions precede governments and laws. The tribal organizations of hunters and fishers do not possess the true attributes of government, in the sense in which it is used by civilized man, to as great an extent as one of the many great corporations of modern times. The authority of the chiefs is hardly more than advisory. Matters affecting the tribe are usually determined by public assemblies, and war parties are made up of volunteers who submit to neither discipline nor command. Yet everywhere and even among the very lowest, customs, ceremonies and fashions are found to exist, the observance of which is compelled by public sentiment. These are often most cruel and unnatural. Let us examine some of them.

The custom of perforating the lips, nose and ears, of cutting off fingers, making incisions in the flesh and inserting most unsightly ornaments in lips, nose and ears is common with more or less variation among American Indians, African tribes and Polynesians. Thus the Thlinkeet women slit the under lip and gradually enlarge the opening until a large block of wood is inserted from two to six inches in length and from one to four inches in width and half an inch thick. It is so large that when withdrawn the lip falls over on the chin.

The Koniagas and Thlinkeets imprison girls arriving at the age of puberty in huts so small as to keep them continually in a cramped position for six months or even a year. Dances and feasts of various kinds are characteristic of savages everywhere. Love of ornament seems to precede a desire for cloth-

ing. Thus in many parts of the world savages may be found tattooed, painted, adorned with feathers, quills, rings, shells, stone and wooden ornaments, often hideous in appearance to the stranger, but rigidly exacted by custom, while covering for decency or comfort is not thought of. The Indians of North America were remarkably formal and ceremonious in all their negotiations and consultations. Their grand councils are sometimes described as models of decorous procedure. Marriage ceremonies were not generally very formal, and the bond of union often not of great force. Polygamy was generally allowed, but monogamy was the rule. They were undoubtedly far more lax in morals than the whites, yet the difference is still of degree. The Indian lodges among the leading tribes sheltered families where continency and affection were not wholly unknown. Among them there were marked differences as well in moral character as in mental capacity. The curious custom of dividing the tribes by totems was not a mere whim but had its foundation in a sound policy, and the rules relating to marriages based on it tended to check too close in and in breeding, likely to occur where people were divided into such small societies. Funeral rites were often impressive and proportioned to the estimation in which the deceased was held. Medicine men imposed on the ignorant with their charms, incantations, and absurd remedies, yet the medicinal properties of some plants were known and with all their filthiness the natives of the Pacific coast appreciated the value of a hot bath, for which most tribes provided a crude bath-house. Alcholic stimulants seem to have been wholly unknown to them. Their only intoxication was that resulting from war dances, superstition and bloodshed, by which at times they were wrought to a state of frenzy. Tobacco was much used and stupor and sickness often resulted from their gluttony at feasts. Undoubtedly the wild tribes of America exhibited, over an extensive area and under diverse circumstances, the first beginnings of organized societies more completely than any other people. While many variations of manners and customs are to be noted, there was a marked similarity in their crude tribal organizations, clearly traceable

to their habits of life and environments. The Indian was first and mainly a warrior, but to live he must hunt and fish. Though most of the eastern tribes raised a little corn and some few other vegetables, they still relied mainly on game for their subsistence.

Their only conception of title to land was for a hunting ground and temporary occupancy. This title each tribe was called on to maintain against the encroachments of hostile neighbors. With their habits of life, a dense population could not be maintained nor a large city be built. Their property consisted only of weapons, temporary movable lodges and spoils of the chase, supplemented by crude household utensils made from wood or stone. Moneys and revenues they did not know. In seeking to understand their government it is of first importance to know what could be governed. This ordinarily was a village of a few lodges, seldom more than one hundred. The people of the village were mostly related by blood and marriage. Whenever occasion required they could easily come together for consultation. Each was known to the other. Personal prowess in war and in the chase, as well as eloquence and wisdom in council, were quickly discerned and understood by all. There was a strong tendency to community of enjoyment of game taken and crops gathered. Under these circumstances leadership was accorded to him who gained the approbation of his fellows. A chief was a natural leader, chosen by his comrades. As a ruler however he scarcely exercised any of the attributes of sovereign power. He could not levy taxes, but was expected to generously distribute the game he secured. He had no lands yielding rent. He could not make laws for the people or declare war or make peace for them. All such matters were referred to grand councils. His war party as a rule was made up of such as chose to follow him. In battle much more depended on individual craft and bravery than on generalship. Here and there throughout history we learn of leaders who exhibited a capacity for organization and generalship, and who were able to impress on scattered tribes the advantages of combination and concert of action for mutual

protection. These combinations usually fell in pieces at the death of the leader.

The famous Iroquois confederacy is an example of a more enduring and efficient combination, which enabled the six nations to maintain their hold on the rich hunting grounds and well stocked lakes and streams of New York against all hostile tribes. Their superiority over hostile tribes was due to their superior combination and nothing but the irresistible march of the whites was able to destroy them.

The Comanches also evidenced some capacity for organization and maintained a powerful confederacy. Neither of these confederacies however presents much semblance of a government. The levy of taxes and expenditure of the money by public officers, which plays so great a part in all advanced states, was unknown. The members of the tribes were all warriors with no other calling to interfere. A levy of forces was a levy en masse, and public sentiment was always sufficiently powerful to drive every able-bodied man to seek distinction in war. While the women and children were usually left in a place of comparative safety, when war parties were out the organization of society was not greatly changed. All drudgery was done by the women in peace as well as in war, and feasts and famines alternated, whether the males were on the war path or in the lodges.

The ancient Germans as described by Caesar and Tacitus present many points of resemblance to the Indians in customs and environments as well as in social organization, though in a much smaller territory. Tacitus says: "I concur in opinion with those who deem the Germans never to have intermarried with other nations; but to be a race pure, unmixed and stamped with a distinct character. Hence a family likeness pervades the whole though their numbers are so great; eyes stern and blue, ruddy hair, large bodies, powerful in sudden exertions, but impatient of toil and labor, least of all capable of sustaining thirst and heat, cold and hunger they are accustomed by their climate and soil to endure."<sup>1</sup>

"It is well known that none of the German nations inhabit

<sup>1</sup> Tacitus, Germany C 4.



cities or even admit of contiguous settlements. They dwell scattered and separate as a spring, a meadow or a grove chance to invite them. Their villages are laid out, not like ours in rows of adjoining buildings; but everyone surrounding his house with a vacant space either by way of security against fire or through ignorance of the art of building. For indeed they are unacquainted with the use of mortar and tiles, and for every purpose employ rude misshapen timbers, fashioned with no regard to pleasing the eye." They also dug and inhabited caves.<sup>2</sup>

"In the election of kings they have regard to birth; in that of generals to valor. Their kings have not an absolute or unlimited power; and their generals command less through the force of authority than of example. If they are daring, adventurous, and conspicuous in action, they procure obedience from the admiration they inspire. None however but the priests are permitted to judge offenders, to inflict bonds or stripes, so that chastisement appears, not as an act of military discipline, but as the instigation of the god whom they suppose present with warriors."<sup>3</sup> They were great gamblers. "On affairs of small moment the chiefs consult; on those of greater importance the whole community, yet with this circumstance that what is referred to the decision of the people, is first maturely discussed by the chiefs."<sup>4</sup>

The real power seems at all times to have been in the general assembly which listened to orators and leaders and gave weight to the counsels of such as it chose to follow. Prowess in arms was always the main source of distinction and war was the only real business of life. Their scanty clothing was made largely from the skins of wild beasts and that of both men and women was fashioned substantially alike. They were extremely hospitable both to strangers and acquaintances. As with all tribes which have not reached the commercial stage, they were fond of giving and receiving presents. In agriculture they do not appear to have progressed farther than the Creeks, Cherokees or Navajos at

<sup>2</sup> *Id.* C 16.

<sup>3</sup> *Id.* C 7.

<sup>4</sup> *Id.* C 11.

the time of the advent of the white man, nor in architecture or the manufacture of clothing and household utensils. The description so far given of the Germans in the time of Caesar and Tacitus would apply very well to most of the more advanced and vigorous Indian tribes at the time of their first contact with the whites. Let us note the leading points of difference. The Germans had horses and cattle. They made beer and the tribes near the Rhine also used wine. They drank to excess. They used iron for their weapons. They had fixed customs with reference to the use of land for tillage, but which hardly amounted to an assertion of title even in the tribe. Though subject to the vicissitudes of war and sometimes driven from place to place, they were less migratory than the Indians. They were more cleanly and better fed, having the advantages of milk, cheese and the flesh of their cattle. The most marked and important characteristic of their manners, as described by Tacitus and concurred in by all the early writers, is the purity of their domestic relations, the care taken in rearing their young and preserving their strength. Chastity is seldom characteristic of barbarous races, but, in this particular, their manners were in striking contrast with those then prevailing in Rome. In the development of government it is apparent that the Germans at the time of our first introduction to them were in substantially the same stage as the Comanches, Iroquois and other more advanced tribes of the north at the time of the discovery of America.

The incipient stages of government everywhere exhibit either voluntary association for a common purpose or the despotic rule of the strong. In the former case the authority terminates with the necessity calling it into existence, and in the latter is dependent on the capacity of the master to maintain his supremacy. In either case the authority exercised is arbitrary in character and not exercised in accordance with any established rules.

Among the American Indians the organizations were largely voluntary in character. In Africa despotic tendencies predominate. The savage tribes of Africa are not less given

to bloodshed than the Indians, but possibly a little less inclined to inflict cruel tortures on enemies, equally violent in temper, but rather warmer in attachment, equally warlike, but more inclined to fight in the open and on even terms.

In making provisions for the future, the African tribes are far superior to the Indians. Even the most fierce and independent tribes cultivate the soil to good purpose, raising large variety of vegetables and fruits and also keep cattle, goats and fowls, from which they are supplied with meat, milk, butter and eggs. This is especially true of the stalwart tribes and nations dwelling in the great lake region of equatorial Africa. The Hottentots, often mentioned as of a very low type, tilled the soil and kept their herds. In manufactures workers in iron are found by travelers in the heart of the continent.

The classification often made of the stages of progress of the race, based on the nature of the implements used, will not hold good to any degree whatever as a classification of social development. The stone age, the bronze age, the iron age, are supposed to name the successive stages of human progress, and in the development of the arts doubtless do, but in moral and social development they indicate nothing. Nor are the designations as hunters, shepherds and tillers of the soil more expressive in these respects. Along the great Congo and its tributaries are to be found many tribes which have passed all these stages, having their flocks and herds, their gardens, and fields of grain and fruits, which evidence considerable skill in the manufacture of household implements, boats, nets, etc. and also forge iron, from which they make knives, spears and other weapons, yet morally these people are among the most depraved. They are horrible cannibals. They are thieves and robbers as well as murderers at all times. Domestic virtue is unknown. Some tribes eat the old people when they cease to be capable of taking care of themselves, if we may believe the accounts of travelers. With a great part of them the governmental growth does not extend farther than tribal organization with no substantial power in the chiefs.

Throughout Africa all governments seem to be merely an extension of the relation of master and slave. Though possessed of strong and vigorous bodies, of considerable skill and industry in providing for bodily comforts, of courage as well as cunning in war, they are sadly deficient in social virtue. From the small weak tribe, struggling for existence against its enemies, to the powerful kingdoms like Uganda, Unyoro, Dahomey and Abyssinia, all authority is exercised unchecked by law. Whatever the ruler does is in accordance with his individual will. Where the power is conceded the mode of its exercise is never questioned. When the king of Uganda sees fit to depose some one he has elevated to a high position, he sends a favorite with a sufficient following to "eat him up," which means that the obnoxious one is killed and his wives, slaves, cattle and property are confiscated and given to whomsoever the despot wills. The practice of polygamy is limited only by poverty. A great despot like the king of Dahomey may far outclass even the great Solomon in the number of his wives. The mode of administering the greatest of their governments is exceedingly simple. Wherever the king acts directly on his subjects, he rules as an absolute despot, enforcing his commands summarily by seizing property or person and taking life according to his humor. Where he acts through subordinates whom he cannot oversee, the same despotic power and discretion is exercised by the underling, who is only restrained by fear of displeasing the king. The horrible cruelty so often exhibited by these despots would seem such an intolerable evil that anarchy would be preferable. Yet, comparing the conditions of the people in the strong states with those of the scattered tribes, we find that even such a despotism exists because it is better than no government. Scattered villages, unprotected by any strong combination, are surprised and destroyed by some marauding tribe. Peace and plenty for a generation in some spot may be followed by partial or total destruction in a day. This has been the history of wild tribes everywhere from the earliest times of which we have any account. Tribe against tribe in battle to the death from generation to generation has

been the history of the race. The hunters of America, relying mainly on game and spontaneous products, were kept constantly reduced in numbers by fierce wars and frequent famines. The Africans with far better food supplies multiplied faster and developed more industry, yet bloody and devastating wars seem to have been not less frequent with them. The effect of organized government everywhere has been to check tribal wars, to encourage industry, and to increase population. Though a large country be at war, there is peace to all save those in and about the scene of the struggle. The great nation too is not likely to be more frequently at war than the small tribe, and the percentage of destruction of those engaged generally increases in inverse ratio to numbers.

The African race throughout all ages has demonstrated its ability to survive and even increase in contact with the other races. Although northern Africa has been subject to the influence of European and Asiatic civilization from the earliest times, it still retains its distinctive characteristics, and the negro type dwelling south of the great desert exhibits scarcely a trace of intermixture with the whites. Along the eastern coast it is true that the Arabs have intermixed and modified the type to some extent, but the predominant characteristics are distinctly African. The civilization of ancient Egypt does not appear to have ever ascended the Nile far beyond the desert, but it is probable that knowledge of agriculture and the art of forging iron has spread over Africa from Egypt and Arabia.

In comparatively recent times European civilization has taken a firm hold in south Africa and is rapidly extending toward the north. To what extent the African will give way and vanish before the Caucasian in the Tropical regions remains to be seen. In America it has been demonstrated that the negro multiplies both while in the condition of a slave to the white and as a free man. Everywhere and under all conditions he exhibits strong attachment to his offspring and, while lecherous, is still warm in domestic and friendly attachments, and often exceedingly kindly in disposition when his passions are dormant. In physical development the black

man can not be classed as clearly inferior to the white. Though some tribes are dwarfed and illformed, the great majority are equal in size and strength to the best developed Caucasians. Why they should have made so little progress in constructing governments and enacting laws is an interesting subject of inquiry. Except where brought in direct contact with some superior race, they seem never to have learned any system of writing and, as we have seen, their only idea of government has been that of arbitrary personal authority, unrestrained by law or settled custom. Though in the region of the great lakes the natives cultivate the land, often to a high degree, Livingston, Stanley and other travelers fail to inform us of any system of laws governing land tenures. The chief or king may decide disputes between conflicting claimants, but he does so according to his own caprice rather than by any settled law. The marvelous fertility of the soil, the extent of unoccupied land and the frequent destruction of communities by war, seem to afford a continual outlet for any increase of numbers. It may be that a close study by a careful observer would disclose more in the nature of settled principles of government among them than the writings of hasty travelers record, but it seems clear that their conceptions of rules of property and laws governing the conduct of individuals toward each other, except where modified by contact with other races, are not in advance if really equal to those of the American Indians.

Intermediate the prevailing tribal organizations of America and the highly developed governmental systems of the Mexicans and Peruvians, were many nations advanced somewhat above the common level of the rude tribes. The Comanches presented an advanced type of the Indians who occupied most of the North American continent, well formed and vigorous in physique, brave and warlike, hospitable in peace, fierce and cruel in war. They were nomads. They held public councils at regular intervals to discuss public matters, make laws and punish crime. The majority ruled. Laws were published by a crier. Justice was administered by a council of the tribe whose sentence was carried into execution by the chiefs.

A system of signals by fire and smoke was used to call their forces together in case of need. In war they were formidable and could bring to the field a force of several thousand. Crimes were punished rigorously and toward each other they were peaceable. Their treatment of women was in accordance with the usual customs of savages. Wives were bought and made drudges for their husbands and polygamy prevailed. No attention was paid to agriculture, but the vast herds of buffaloes on the plains afforded an ample supply of meat. The Navajos, Mojaves and Yumas were more peaceful and industrious in their habits. They cultivated the soil and raised corn, wheat, beans, pumpkins, melons and other vegetables. The Mojaves built substantial dwellings of very peculiar construction, and cylindrical granaries. Some tribes entered their dwellings from the top, having neither doors nor windows. The Navajos were shepherds, and their blankets have become noted. In the far northwest the natives showed a tendency to more settled modes of life and to class distinctions. The Nootkas, Chinooks and Thlinkets built large and substantial dwellings of wood, sufficient in size for many families occupying separate apartments. Property in these homes was recognized as vested in those who combined to build them. The villages of the Nootkas were regularly laid out. Something like hereditary rank was recognized, though the head chief had little real power except over his slaves. A sort of nobility existed, based on individual distinction in war or social liberality. Among the Thlinkets and Haidahs the power of the chiefs is said to have been despotic at times. All the Northwestern tribes held slaves and had notions as to property rights. Though instances may be cited of arbitrary power exercised by Indian chiefs, the prevailing genius was that of liberty and equality. Personal prowess was the source of distinction, and recognized individual merit the commission of leadership. The cunning of the medicine man, working on the ignorance and superstition of the members of the tribe, gave him influence, but little real authority. No priestly class appears to have developed except in the advanced states of Mexico and Peru.

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## CHAPTER III

### PACIFIC ISLANDS

The social state of the natives of the Pacific Islands presents a most curious study. Their character as depicted by the early discoverers is contradictory. This however is largely true of all savages. At times they appear as gentle, kindly, hospitable and peaceful, at other times as fierce, treacherous, vicious and murderous. That they were mostly cannibals is beyond doubt, yet they generally lived under conditions affording abundant and varied food supplies. They tilled the soil, raised pigs and fowls and in most parts recognized individual ownership of the soil. Though scattered over numerous islands distant thousands of miles from each other, the people appear to be of one race and their language and customs are surprisingly similar from Hawaii to New Zealand. The ignorance of Europeans of their ideas and superstitious observances of the laws of taboo have doubtless led to many exhibitions of fierceness by the natives, the reason of which has not been understood by Europeans. The violation of a taboo by taking a sacred thing or invading a sacred place aroused the otherwise peaceful islander to murderous frenzy. Kingly authority, class distinctions and slavery appear to have been general in their system, which is spoken of by some as based on castes.

In some respects they are, according to European ideas, to be classed as among the lowest types of mankind. They went naked and ate human flesh. Yet they recognized governmental authority and rights of property. These were upheld by intricate religious or superstitious observances of taboos, which made sacred to the use of the king all things which he touched and, lest the property of the subject should become so, forbade him to use anything but his own. With them, as with all savages in moderate climates, the body was disfigured

for ornament, and the idea of making clothing for comfort does not appear to have suggested itself. Owing to the small size of the islands and the distance of one from another, the authority of a king seldom extended far and the number of people under one sovereign was necessarily small in comparison with even the larger African despotisms. Still it was not uncommon for a king to rule a whole group of islands. New Zealand affords a comparatively wide field, but does not seem to have developed a higher type of government. Numerous chiefs having little real power led the people in their wars. Having no money there were no taxes, but there were slaves. Having no knowledge of the use of letters they had no written laws, but their customs and superstitions, taught orally, were quite complicated. There was little basis for commerce, as the products of all the neighboring islands were substantially alike, and the fish of the sea were equally accessible to all. Manufacturing was mostly limited to building huts, boats and making weapons and fishing tackle. The similarity of the people and their customs on so many islands, so remote from each other, is very striking. While on the continents tribes differing radically in language, customs, character and appearance are often found in close proximity to each other, the people of Hawaii and New Zealand, though separated by sixty degrees of latitude, seem clearly of the same race.

As with nearly all the lower races the women bore the heaviest burdens. The taboo prohibited her from partaking of the flesh of pigs and fowls and from feasts of human flesh. Enforced by superstitious fears as well as physical force, the taboo operated as a powerful aid to the authority of the ruler and exercised a wide influence on the conduct of the people. It was in effect a most peculiar system of laws, having little similarity to anything found in continental regions. The taboo of the king or chief rendered not only his person and property sacred but even his name. This was a recognition of his divine right far surpassing that of European kings. The idea of the sanctity of priests, churches and sacred places is similar only in a slight degree to the idea of absolute ex-

clusiveness imposed by the taboo. As applied to the matrimonial relation the wife was taboo to all but her husband. For savages this was quite a close approximation to the idea of the sacredness of the marriage relation.

The inhabitants of the Marquesas Islands at the time of their discovery by Captain Cook in 1774 are estimated to have numbered 150,000. They then were, and still are, described as remarkably perfect physical specimens of men and women, yet matrimonial relations were so lax as to approximate promiscuity. Children were affectionately treated by all without regard to relationship. The abundance of natural food products and climatic relief from need of clothing relieved parents from all anxiety about their support. When discovered they are said to have been exceptionally free from disease and physical ailments of all kinds. The Europeans failed to induce them to adopt their civilization and modes of life, but succeeded in introducing their vices and diseases with the result that the whole native population of all the islands is now estimated at less than 2,000, many of whom are hopelessly diseased.<sup>1</sup> In New Zealand, Hawaii, Tahiti and other islands contact with Europeans does not appear to have been quite so disastrous to the natives, but they do not appear anywhere to have profited from the introduction of either European or Asiatic civilization.

<sup>1</sup> John W. Church in *National Geographic Magazine*, Vol. XXVI, No. 4.

## CHAPTER IV

### MEXICO

The governmental systems of the inhabitants of the Mexican plateau differed, not merely in degree of development, but radically in character, from the tribal organizations and confederacies of the wild races of the north. The Tlascalans seem to have retained more of the traits and characteristics prevailing among northern tribes than their more numerous neighbors. Prescott speaks of Tlascala as a republic, but, if such, it was of a most peculiar sort. The principal authority was vested in four chiefs, each of whom had his separate district, parcelled out among sub-chiefs, who held by a tenure similar to that of the feudatory vassals of Europe, and were bound to render military service to their chiefs, as well as to supply their tables. The affairs of the general government were settled by a council consisting of the four principal chiefs and the inferior nobles. The domains of the sub-chiefs were parcelled out among their retainers, who were bound to render them like service as that they gave their superiors. The bond of union appears to have been very firm and was well maintained. In the city, order was preserved by a municipal police. Military prowess was the source of greatest distinction, and a rank corresponding with knighthood was conferred on those exhibiting especial merit. The lowest order of people appear to have been held in a condition not unlike the European peasants of feudal times.

The darkest aspect of Aztec life was the bloody and gloomy religion, the cruel rites of which constantly characterized the deity as savage, remorseless and devoid of love or pity. The custom of eating human flesh is only reconcilable with the otherwise high state of civilization attained, as an ordinance of their horrible superstition. Their war god, like the war gods of all people in all times, taught lessons of cruelty and forbade all exhibitions of pity or kindness toward enemies.

The government of the Aztecs was an elective monarchy. The sovereign was selected from the brothers of the deceased monarch or in default of them from his nephews. The choice was made by four of the principal nobles, designated for that purpose by their own order in the preceding reign. This system appears far better calculated to place a meritorious prince on the throne than the prevailing system in modern Europe, which places the crown arbitrarily on the eldest son of the deceased monarch without regard to merit. It also avoided the necessity for a protector ruling in the name of an infant king, for among those eligible there would seldom fail to be an adult. The electors, taken from the leading men of the nation, were familiar with the character of all the princes and in a position to make the best possible selection. This system is doubtless due to the democratic ideas which prevailed among the aborigines of America, and to their settled custom of awarding power and leadership only to such as exhibited capacity for it. The results fully demonstrated its wisdom, for their kings were men of conspicuous ability. The king was not only the chief executive and commander-in-chief of the army, exercising direct authority over the principal nobles, who were required to render him personal service at his palace and in his body guard, but he also exercised the legislative function. This he did in a manner far in advance of the methods of African and many Asiatic despotisms. The laws promulgated were registered and exhibited to the people in picture writings. They were of course adapted to the conditions of the people, and show evidences at the same time of enlightened policy and savage cruelty. Murder and adultery were punished with death. Thieves were either enslaved or put to death. Among capital offences were numbered removing the boundaries of another's land, altering the established measures, and misconduct of guardians in dealing with the property of their wards. Prodigals and drunkards were severely punished. The marriage relation was clearly comprehended and its sacredness recognized and protected. Divorces could only be obtained by decree of a court having jurisdiction solely of domestic affairs, after a full and patient hearing of the parties.

Slavery existed among them, but in the least objectionable form in which it has existed anywhere. Its subjects were prisoners of war, who however were almost invariably sacrificed rather than enslaved, criminals, public debtors and poor persons who sold themselves or their children. The services to be exacted were limited with precision. The slave was allowed to have his own family and property, even other slaves. His children were free. There was no such thing as hereditary slavery, and sales of slaves were rare. The separation of the judicial power from the executive and legislative evinces a comprehension of the principles of good government hardly to be looked for. Over each of the principal cities and its tributary country there was a supreme judge, appointed by the king, but holding his office for life. He had jurisdiction in both civil and criminal causes. There was an inferior court in each province, composed of three members, having concurrent jurisdiction in civil causes. In criminal cases an appeal lay to the supreme judge. Besides these there were inferior magistrates throughout the country, chosen by the people of the districts and having jurisdiction in minor causes. There were also inferior censors, elected by the people, whose duty it was to watch over a certain number of families and report any infraction of the laws. In Tezcuco a general meeting of all the judges throughout that kingdom, presided over by the king, was held every eighty days at the capital for the determination of causes of first importance. This general court also acted as a grand council of state. For a judge to receive a bribe was punishable with death. The judges were supported from a part of the produce of the crown lands set apart for that purpose. They wore official robes and worked full days. Officers corresponding to sheriffs and bailiffs were in attendance to preserve order, summon parties and witnesses. Lawyers do not appear to have been in favor and are not mentioned in connection with the proceedings of the courts. In criminal causes the accused was allowed to testify. The testimony and proceedings were taken down by the clerk in hieroglyphical painting and delivered to the court.

In the art of levying taxes, as in all other branches of the

science of government, the Aztecs were far in advance of all savages. Besides the revenue from crown lands, services in building the kings palaces and buildings were exacted from laborers dwelling in the adjacent territory. Tribute in kind was required from farmers and manufacturers, and the table of the monarch and his retainers was abundantly supplied by his subjects. His granaries were filled with corn and his warehouses with cotton cloths and feather robes, arms, armor and utensils collected by his tax gathers from all parts of the empire. In fact every variety of product for use or ornament was collected for the king.

Any description of the Mexican government which ignores the priesthood leaves out the most characteristic part. The influence of the priests on the policy, as well as on the manners and morals of the people, was of first importance. The chief priests were not only at the head of a vast religious establishment, numbering thousands of inferior members, but at the same time superintended the educational system of the empire and exercised a most potent influence on the policy of the king. To supply the thousands of human victims, who were sacrificed during each year to their cruel gods, it was necessary to wage war and bring in captives. At the behest of the priests the monarch was often influenced to put the armies into the field. Thus the empire was extended, at the expense of neighboring tribes, and victims were supplied for the sacrificial stone.

At the head of the religious order were two priests chosen by the king and principal nobles. Below them were others of various ranks and functions in all the towns of the empire, forming a very numerous body. Their *teocallis* or temples, in great number and many of them of vast size, were thickly scattered about the cities. On the top of the terraced mounds of earth, on which the temple proper stood, the victim was bound on the sacrificial stone, and in sight of the people far and near the priest cut his breast open with a sharp stone, tore out his throbbing heart, held it bleeding to the sun and then cast it at the feet of the idol. The body of the victim was then given to his captor to be served at a great feast given to his friends.

In some respects the religious societies were similar to those of the Catholic Church. They held and tilled great bodies of land, the surplus products of which over what was consumed by them, were distributed to the poor. The priests heard the confessions of the people and granted absolution for their misdeeds. More important, however, than all this, the religious houses were the repositories of learning. To them was due the credit of developing the art of picture writing, and they took charge of the instruction of the young. By this means their doctrines and superstitions were given a strong and lasting hold on the people, especially the nobility, whose children were trained by them.

In all ages and among all people public ceremonies have played an important part in public affairs and exercised a powerful influence on society. Among the savage tribes of America, feasts, dances and formal councils have afforded the occasion and opportunity for gathering the sentiment of the tribe on public questions, for arousing their passions and starting them on the war path. In imperial Rome the culture and innate savagery of the people were exhibited at the circus. Nero read his verses above the arena whose sands soaked up the blood of martyrs, gladiators and wild beasts. The Mexicans exhibited no less strong contrasts in their public ceremonies. Beautiful flowers in tropical profusion, emblems of peace and innocence, adorned the processions which bore victims to the altars of the gods. Innocent babes, gaily decked with beautiful robes and roses, were carried to their doom by chanting priests. At the same time that observance of these most cruel and savage rites was inculcated, the priests taught lessons of private virtue and integrity, obedience to law, industry and thrift. It may be remarked that even their treatment of prisoners was an improvement on that prevailing among the savage tribes with which they were surrounded. The act of cutting open the breast and tearing out the heart was quickly and dexterously performed, and the suffering of the victim soon ended. Let it not be forgotten also, while we are condemning the Aztecs for their barbarity, that, at the same time, the most Christian nations of Europe were



breaking heretics on the rack, walling them up alive in tombs and applying all the tortures which fiendish ingenuity could devise, for the purpose of preserving intact the authority of the priests and teachers professing to be followers of the meek and lowly Nazarene, who came to bring peace on earth and good will to men. Let us remember that our Puritan ancestors, even at a later day, hung and burned people guilty only of the imaginary crime of witchcraft. Let us bear in mind how heads were lopped off in England and elsewhere for even dreaming the death of the king. Though so abhorrent to our ideas and feelings, their cannibalism seems to have been prompted by fanaticism rather than foul appetite.

The number of festivals observed by the Mexicans was very great. Each god received his due honors, and all religious ceremonies were conducted by the priests and observed by the people with order and decorum. It is curious to note that under the more ancient civilization of the Toltecs human sacrifice was unknown. Not until the ascendancy of the Aztecs had the Inquisition begun its bloody career on the European continent.

The domestic regulations of the Aztecs were neither of the best nor of the worst. Polygamy was practiced to some extent, especially among the rich, but was not general. Slavery as we have seen existed but in a mild form. On the other hand marriages were celebrated with much ceremony, continency on the part of both sexes was strongly inculcated, and adultery severely punished. Though children were strictly ruled, especially while under instruction, their parents regarded them with affection. Wives were not slaves to their husbands, but were their companions and shared with them at feasts and entertainments. Divorce implied disgrace and could only be obtained through a court for cause. Guardians were appointed for orphans and were held to the strictest account in the management of their estates. The principal part of the labor of the fields was performed by the men. Only the lighter kinds of work were done by the women, and it is said that in the division of labor the weaker sex was quite as tenderly regarded as in most parts of Europe today.

The educational and material progress made by the Mexicans was such as might naturally be expected from their circumstances. Considerable skill was developed both in agriculture and in manufactures, but trade hardly passed the stage of local barter. Regular markets were held in the cities on every fifth day, which were attended by a great concourse of people. Different quarters were assigned specially to each kind of commodities and, where barter failed, a kind of currency consisting of quills of gold dust, bits of T shaped tin and bags of cacao of a specified number of grains was used. The precious metals as well as tin and copper were wrought with much skill into useful and ornamental vessels and implements of various kinds. The fibre of the maguey and cotton furnished material for the weavers, of which they made good use, and the richest robes were made with feathers. Though their architecture was not of high order, the *teocallis* and palaces were of great size, and the latter of considerable pretensions for comfort. Post routes were established throughout the empire, with stations at short intervals, and by means of trained messengers dispatches were forwarded with remarkable speed. Picture writing had reached a stage of development that furnished means of communication by writing and orders from the king were so transmitted by his messengers.

The most marked and surprising evidence of scientific progress was in the correctness of their calendar, in which the length of the year was set down with a very close approximation to absolute accuracy, and the equinoxes and solstices were correctly noted.

Domestic animals the Aztecs had not. They were therefore total strangers to the shepherd state. The buffaloes of the prairies were never reduced to subjugation by them. The care with which they made provision for future wants in well stored granaries and warehouses is in marked contrast to the improvidence of northern tribes. In their *pulque*, made from the sap of the maguey, they had an intoxicating drink of which they were excessively fond, but of which only the old people were allowed to partake freely. The diversity of

climate due to difference in elevation afforded a most diversified and prolific flora which they studied with care. Their gardens afforded both useful and beautiful plants in the greatest variety.

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## CHAPTER V

### PERU

The governmental system of Peru, as it existed prior to the Spanish conquest, is unique in some of its most essential features and worthy of the most careful study. For information with reference to it we have to look to the accounts of its fierce and fanatical conquerors, who probably failed to fully and clearly comprehend the spirit of it.

The native tribes of South America were generally as deficient in organization as those of North America. The Araucanians, inhabiting the country to the south of Peru, exhibited some capacity for concerted action and were a bold and vigorous race, but their institutions bore no resemblance to those of Peru. Why a great and strong government, so peculiar in form, should have developed amidst such surroundings, apparently with nothing to suggest the well digested policy pursued by the Incas from generation to generation, is an unsolved riddle. The tradition of Manco Capac and Mama Oello Huaco, children of the Sun, appearing near Lake Titicaca and proceeding to gather the fierce, warlike and cannibal tribes into communities and teach them the arts of peace and the duty and blessings of mutual helpfulness, is as charming as anything to be found in Greek Mythology, yet fails to account for the origin of the Empire, unless we are ready to concede, as did the Peruvian people, the divine origin of their rulers. In the claim of a divine origin for kings there is nothing new or uncommon.

The power of hereditary despots is universally exercised under claim of a divine commission. Generally this claim has been fortified by an organized priesthood, sedulously teaching the people to view the king with awe and reverence as the representative on earth of the Deity. Inferior officers civil and military have, through various motives, also instilled

into the minds of the multitude an idea of the sacredness of the prince and the divinity of his commission to rule over men. The government of Peru was a monarchy, hereditary in the male line. The Inca stood at the head of both the civil and religious orders. He married a sister of the full blood for his queen, whose issue succeeded to the throne, and also had numerous other wives. All descendants of the Incas constituted the highest order of nobility, and from them all the great offices of state were filled. From a small territory in the vicinity of Cuzco the dominion of the Incas was gradually extended, by peaceful methods wherever possible, but by war when necessary, over adjacent tribes. The conquered people were never exterminated, but became subject to the same regulations as other subjects and received like protection. Their caciques constituted an order of nobility, inferior to that of the blood of the Incas, and exercised some authority over the tribes to which they belonged. They were required to visit the capital and allow their sons to be educated there, so that in the succeeding generations they became imbued with the principles of the government. The members of the family of the Inca are said to have been of a superior type to the mass of subjects. Whether this was due merely to difference in mode of life and opportunities for development or to a diversity of original stock cannot be very satisfactorily answered. Over the religious order stood a high priest or *Villac Vmu* as he was called, inferior only in dignity to the Inca, by whom he was appointed from his near kindred, to hold the office for life. The *Villac Vmu* appointed to all the inferior stations of the order. Those officiating about the temple of the Sun at Cuzco were exclusively of the blood of the Incas, as were also the high priests in each district of the empire, but ministers in provincial temples were selected from the families of the native *curacas*. All members of the Inca nobility were looked up to with veneration as belonging to the holy order. The functions of the priestly order related exclusively to service in the temples and in connection with the very elaborate feasts, festivals and public worship. The Sun was the principal deity worshipped, with a small share

of devotion for the Moon, his sister wife, the stars, the rainbow, thunder and lightning. But the Incas, like the ancient Greeks and Romans, were exceedingly tolerant of other gods, and also had their Pantheon in which were set up the images of the deities of all the conquered tribes of the empire. Following the submission of a tribe worshipping a peculiar god or idol, the image was at once promoted and took its place among the gods at Cuzco, where it received appropriate homage at the expense of the state. Public sacrifices were made at the great festivals, and it is said at times in addition to animals, grain, flowers and sweet scented gums, children and maidens were also sometimes offered on the altar. It is certain, however, that human sacrifices were rare, and it is even disputed by some that any such were made. The "House of the Virgins of the Sun" at Cuzco was filled with fifteen hundred vestal virgins of the blood of the Inca, who kept the sacred fires, started at the annual feast of the Rayini, and wove from the hair of the vicuna the hangings for the temples and the clothing for the household of the Inca. Though called Virgins of the Sun they were really for the Inca, who selected such of them as he pleased for his seraglio. Such as were chosen were kept either at Cuzco or at the different palaces throughout the empire. In case he chose to dispense with any of these, they were returned to their former homes, where they were treated with marked distinction as brides of the Inca. If guilty of any loose conduct while in the House of the Virgins, however, they and all connected with them were punished with death.

The empire of Peru was divided into quarters, to each of which ran one of the four great roads diverging from the capital. Cuzco was likewise divided into four quarters, and the people of each tribe or district residing in the capital lived in the quarter nearest their native place. Each of these four great provinces was placed under a viceroy, who ruled with the aid of one or more councils for the several departments. The viceroys resided some of the time at the capital, where they formed a council of state to the Inca. The people were divided into bodies of ten, and the head of each decade was

responsible for their conduct. Above these were divisions into fifties, hundreds, five hundreds and thousands, with an officer having supervision at the head of each. A further division into departments of ten thousand people was also made, over each of which was placed a governor of the blood of the Inca.

The judicial system was exceedingly simple, and the law's delays found no place in it. There were regular courts in each town and community, having jurisdiction of petty offenses, while those of more serious character were heard by superior judges or governors of districts. The judges were all appointed by the Inca and removed at pleasure. They were obliged to determine every suit in five days from the time it was brought, and there was no appeal. A board of visitors traveled over the kingdom, inquired into the conduct of the magistrates and punished any misconduct. Inferior courts were required to make monthly returns of their proceedings to the superior ones, who in like manner reported to the viceroys.

Theft, adultery and murder were capital offenses, unless mitigating circumstances were found. Blasphemy against the Sun and malediction of the Inca were punished with death, as also was the burning of a bridge. There were few laws relating to property rights as between private citizens, for the reason that the general policy of the empire left no room for much in the line of private interests. To destroy landmarks, burn a neighbor's house or cut off his water supply was a serious offense. In its division of the land and superintendence of all the business of the people is exhibited the most marked peculiarity of the Peruvian polity. The whole territory of the empire was divided into three parts, one for the Sun, one for the Inca and the other for the people. The proportions varied according to circumstances. The lands of the Sun supported the religious establishments, fed the priesthood and supplied all things needed for their elaborate ceremonials. From that of the Inca the royal household and all the needs of the civil and military establishments were supplied. The remainder was divided in equal shares per capita among the people. The division of the soil was re-

newed every year, and the share assigned to each household was increased or diminished according to the number in the family. The only distinction allowed was in favor of the lower order of nobility, who were given a larger allowance. The people first attended to the cultivation of the land of the Sun. Next they tilled the lands of the old, the sick, the widow and orphan and the soldiers away in actual service. They were then allowed to attend to their own, each by himself, with a general obligation to be mutually helpful in case of need. Lastly they cultivated the lands of the Inca, all working together in gala costume and making it a time of jubilee and festivity. The crops belonging to the Sun and the Inca were gathered and placed in granaries provided for the purpose.

The flocks of llamas were exclusively the property of the Sun and Inca and were cared for by shepherds assigned to that task. Great numbers of them were slaughtered for religious festivals. At the proper time they were sheared and their fleeces deposited in the public magazines, from which the wool was distributed among the people according to their needs, and spun and woven by the women, who were educated to that end. Cotton however was raised on the lowlands and used for clothing by the people in the hot districts. The people were also required to weave for the Inca, and officers appointed for the purpose, distributed the material and directed the work. Not only did they see to the proper use of the material furnished for the use of the Inca, but also to that for the people as well, and care was taken that nothing should be wasted or misapplied. The great majority of the people were husbandmen, who supplied their wants from the lands assigned to them. There was need however of hands to work the mines, which all belonged to the Inca, and to manufacture the utensils and ornaments of his palace and the temples. For these a sufficient number were selected and specially instructed in the arts. For the construction of palaces, temples, roads and other public works, laborers were drawn from the various provinces for stated periods of service and maintained at the public expense while so employed. The



distribution of burdens was fair and equal, so that no person was crushed by the public exaction.

An accurate census of the inhabitants was made and returned every year, and registers were kept of all births and deaths. At intervals a general survey of the whole country was made, showing the amount and quality of the land, and the purposes to which it was adapted. This afforded the basis for the division of the land, the apportionment of public work, the levy of soldiers and the distribution of supplies. Distributions among the provinces and districts were determined by superior officers and particulars were attended to by the local authorities. Thus ancient Peru affords probably the only instance on a large scale of a government mainly devoted to the regulation of the business affairs of the people with a view to promoting the general comfort and prosperity of all. The fundamental ideas of their system were, that all should work industriously yet not beyond the limits of endurance, that each should be provided with the necessities of life, should marry, rear children, live virtuously and honestly. The vast and magnificent public works and the great stores of grain and manufactured stuff found by the conquerors bear testimony to successful employment of the people in industrial pursuits and to excellent economy in the use of the products of their labors. The Spaniards reported finding grain enough to last several years in their granaries and vast quantities of woolen and cotton stuff, as well as implements and utensils of various kinds, in their warehouses. The stores of grain from the lands of the Sun and Inca were not wasted, but in time of need were drawn on to supply the wants of the people.

The government was a great business establishment calling for a vast amount of patient attention to details. The nobility, while enjoying superior advantages, were not mere drones nor intriguing politicians. Each had his duties to perform for the public. The government not only directed all warlike undertakings and all works regarded by Europeans as public, but also filled, to some extent, the place of the merchants and operators of mines and factories. In considering

what was accomplished by this system it must be borne in mind that all was done without the aid of steam, electricity or labor-saving machinery of any kind, that the use of iron was unknown, and that they were wholly unacquainted with letters or even with the rudiments of picture writing; yet they kept more accurate records of the people and resources of the empire than were kept by any contemporaneous European nation. This was done by means of the *quipu*, one of their peculiar devices. It was a cord about two feet long composed of different colored threads, tightly twisted, from which smaller threads were suspended like a fringe. The colors denoted different objects or ideas as yellow, gold; white, silver; red, war; white, peace. Knots tied in the threads indicated numbers, and by different combinations of threads and knots numbers to any limit could be expressed. All calculations were made by use of the *quipu* and with great accuracy. Different officers made reports to the government on different subjects. One had charge of the revenues and reported the stores of various kinds placed in the public granaries and warehouses, and the raw material distributed among the laborers. Another made report of births, deaths, marriages, number of men capable to bear arms and other details relating to population. All returns were forwarded annually to Cuzco, where they were inspected and used by the proper officers. These knotted skeins of many colored thread afforded complete statistics of the material resources and business affairs of the entire kingdom. The system has advantages over reports in written or printed words. There is no chance to talk for the purpose of concealing information. The threads and knots had definite and certain meanings, and told their story once and for all.

Along the great highways, which equalled Rome's great roads in construction, were placed at intervals of ten or twelve miles *tambos* for the accommodation of the Inca and those who traveled on public business. Some of these were very large and designed to lodge the army when marching through the country. A complete system of posts was established along all great routes. Small buildings were erected at intervals

of less than five miles, in which were stationed a number of trained runners, called *chasquis*, whose duty it was to carry dispatches and articles for the use of the Inca and his court. By this means urgent messages were carried at the rate of one hundred and fifty miles a day, and the Inca was kept constantly informed of what was taking place in the most remote parts of the empire. The military system and policy were on an equally orderly and advanced plane. Regular drill took place in every village twice or thrice a month. In case of war levies were drawn from each province and divided into companies and battalions under proper officers, and the whole army was led by the Inca or one of his blood. The troops moved rapidly along the great roads and found ample provision for their support at every camping place. Like Rome in her palmy days, Peru steadily extended her dominion by peaceful negotiation, persuasion and inducements to the chiefs and leaders of neighboring people wherever possible, but by arms when other means failed. Thus the empire spread from its original small district about Cuzco northward beyond Quito to about two degrees north latitude and south to about thirty-seven degrees south latitude, and from the Pacific on the West to an unknown boundary on the eastern slope of the Andes. Each conquered district was carefully surveyed and the lands apportioned on the same principles as were applied in other parts of the empire. The people, especially the chiefs, were taught to speak the Quinchua tongue, the language of the court, and for this purpose teachers were sent into the newly acquired province. In case of serious disaffection or continued turbulence on the part of the inhabitants of any district the people, or a considerable portion of them, were transplanted into some distant province, where they were surrounded by subjects of tried fidelity, and their places filled by the displaced population.

While polygamy was allowed to the Inca, who took to himself wives and concubines in great multitude, and also to the great nobles, and while the Inca took one of his own sisters for his queen, the common man was restricted to one wife, to be selected from the community in which he lived, but was

forbidden to take his sister. Marriage was compulsory. On a stated day in each year all those of marriageable ages, males of not less than twenty-four and females of eighteen to twenty, were called together in the great squares of the towns and villages. The Inca was master of ceremonies in the assembly of his own kindred and married the different pairs by taking their hands and placing one within the other and declaring them man and wife. The same ceremony was performed for the common people by the local magistrates. The consent of the parents was required. A dwelling was prepared for each couple by the district, and their share of the land was set off to them. The simple marriage ceremony was followed by general festivities among the friends of the parties, which lasted several days, and as all the weddings for the year took place on the same day, nearly the whole population of the empire joined in the jubilee. It is asserted that there was not a prostitute in the whole empire. What rules obtained with reference to the remarriage of widows and widowers the writer has not been able to ascertain. The general policy seems to have been to promote industry and virtue by providing all with homes and family ties.

The educational system was based on the theory that each should be taught that and that only which pertained to his particular calling. A favorite maxim of Tupac Inca Yupanquin is said to have been that: "Science was not intended for the people; but for those of generous blood. Persons of low degree are only puffed up by it, and rendered vain and arrogant. Neither should such meddle with the affairs of government, for this would bring high offices into disrepute and cause detriment to the state."

The members of the numerous families allied by blood to the Incas were educated by their *amantas* or wise men at seminaries provided for the purpose. They were instructed with especial reference to the stations they were to occupy. They were carefully taught the principles of government and the laws they were to administer. Those who were to assume priestly functions were specially instructed in religious rites. All were taught to speak the court language in its purity and

learned the science of the *quipus*, which at the same time covered the field of mathematics and supplied the place of written records. Historical traditions were transmitted orally, supplemented by the data recorded by means of the *quipus*. By this method a considerable degree of accuracy could be preserved in a tale passed down through many generations. The use of the *quipu* would seem capable of indefinite extension and elaboration, for threads of different colors and lengths knotted and combined in various ways would possess as great capacity for expressing ideas as arbitrary characters marked on paper. The use of them appears less convenient, but it is evident that the possibilities of communication by means of them are unlimited. The number of primary threads for characters could be multiplied indefinitely and moulded to use in the same manner as letters are now used. It seems, however, that the Peruvians had not developed the system to this extent, but used the threads as symbols of things and to a limited extent of abstract ideas.

The education of the lower orders was not wholly neglected. Those engaged in agriculture were instructed in the cultivation of such products as were adapted to the lands to which they were assigned. The varieties of climate due to difference in altitude, ranging from tropical heat along the sea coast to perpetual snow on the mountain tops, afforded a great diversity of products in neighboring districts. Bananas, manioc and other tropical products on the hot lands, Indian corn, maguey, *cuca*, etc., a little higher up, potatoes and *quinoa*, a grain resembling rice, in the cool mountain regions, and still higher pasture lands for the llamas, wild sheep and other wild animals. All the animals, wild as well as domesticated, belonged to the Inca. At the annual great hunts there was a general muster of the people of the district to round up all within the hunted territory. Beasts of prey were killed, but discrimination was used, and only the male deer and the inferior sort of sheep were killed for food. The rest of the sheep were sheared and turned loose again. Of all the people on the American continent the Peruvians alone kept domestic animals, and they only llamas, alpacas

and other animals of the sheep kind. The llamas were used as pack carriers. In tilling the soil the natives had no assistance from draft animals. All was done with human strength. The value of manures was well understood, and extensive use was made of the guano deposits on the islands near the coast. Vast labor was expended in terracing the steep mountain sides and for the purposes of irrigation, aqueducts, which would do credit to any country, were constructed of closely fitted and cemented stone. One traversing the district of Condesuyu extended over four hundred miles. In the execution of these works the usual engineering difficulties were met and successfully overcome, rivers were bridged, mountains tunneled and the waters of the lakes and reservoirs in the highlands stored and distributed along the slopes where moisture was most needed. In spots where there was lack of rainfall and no means of irrigation, pits were dug to a considerable depth to take advantage of the moisture from below, and by rich manuring crops were raised in these cellar like gardens. While the implements of agriculture were of the most primitive kind, and no aid was obtained from draft animals or machinery, the results were satisfactory and Peru was pre-eminently a land of plenty. These results flowed from the governmental policy and as a result of the education and direction imparted by the orders of the Inca. The comparatively small numbers engaged in mechanical arts were also instructed in their callings and, while the use of iron was unknown, skillful use was made of gold, silver, copper, and tin. Tools nearly equalling steel in hardness were made of copper alloyed with tin. The art of weaving was well advanced, though by primitive methods. In cutting and moving granite and other hard stones they were well skilled. By what process the immense blocks, containing hundreds and even thousands of cubic feet each, were taken from their beds in the quarries, moved long distances and placed in the temples and palaces is unexplained.

Their architecture is said to be wanting in grandeur and finish. They constructed no high buildings. Those even of greatest pretensions rarely had a second story. The walls

were massive but without openings other than doors, and the roofs were often thatched. This may not be due altogether to a want of boldness of conception, for the frequency of earthquakes rendered this style best adapted to safety and permanence. In bridging streams and chasms they exhibited both ingenuity and skill. Suspension bridges two hundred feet or more in length were found by the Spaniards and continued in serviceable condition for many years. They were supported by ropes stretched between stone buttresses. Though the products of Peru were sufficiently diverse to afford a basis for much internal commerce, and though gold and silver in great abundance were produced and used in ornamenting the temples and making vessels and implements for use and ornament for the Inca, no such thing as money or any substitute for it was known. Fairs held three times a month in suitable places afforded at the same time a holiday and opportunity for exchanging products by direct barter.

Ancient Peru presents an instance of a thoroughly organized state, standing alone on a continent filled with scattered tribes of savages, but built from material similar to the chaotic mass filling the balance of the land. Its policy was clearly defined and steadily and successfully carried out. It brought order out of chaos. It waged war on its borders, that the area of internal peace might be enlarged. It exacted industry and gave security and plenty in return. It enforced morality and exacted strict obedience to authority and observance of the forms of a religion exceptionally free from gross superstitions and elevated in tone for a people so environed. No other known government ever succeeded so entirely in ordering the private affairs and daily life of its people, and no other dynasty labored so persistently to guard the people from want. Without any aid by suggestion from other growing civilizations, it evolved a system based on fundamental ideas so clear, strong and well enforced as to challenge the wonder and admiration of all.

It has been a source of wonder to some that the wants of the masses could be so well supplied when the burden rested on the toilers, not only of cultivating their own lands and

supplying their own needs, but also of tilling the lands of the Inca and the Sun as well, besides building and maintaining all public works and performing military service. We have no exact data showing the numbers of the nobility, priesthood and inferior officials or of the common people. Probably the ratio of privileged classes to the whole population was somewhat higher than in most of the more advanced nations of modern times. But the ratio of the whole number of officials, priests and soldiers to the total population was much less than in the military states of Europe. Another element of great importance, which seems to be overlooked, is the entire absence in Peru of those classes who live in luxury from rents of land, interest on money and other forms of income from property. In all modern states these constitute the most favored portion of the people, and the cost of their maintenance is greatest. As they render no service in return for their incomes, whatever they consume is a net loss to the producers. Still another and more numerous, though perhaps less costly class, found in all the most advanced modern nations, is the idle poor, who are either unable or unwilling to find employment. The Inca found useful employment for all. The judges administered the law and paid advocates were unknown.

The system of government was so thorough that there was no room for a complicated code of laws. Each was required to do his appointed share of labor and given his due return. His assurance against want in times of misfortune lay in the public storehouses and the law which required his neighbors to till his field, when he was unable to do so. There were no deeds, mortgages, leases or other contracts relating to land, for each had the use but not the ownership of the soil. There were no notes or other obligations for money, for there was no money. There were no slaves nor contracts of hire. All served the Inca and helped each other. There were no taxes to be raised from a sale of crops. The produce of the Inca's lands, mines and flocks supported the government and the lands of the Sun, the priesthood. Neither the tax gatherer, the usurer nor the landlord ever came to seize and sell



the newly ripened harvest. The government was never a debtor, nor yet wanted means to arm and equip soldiers, build palaces, temples, roads, bridges and other public works.

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## CHAPTER VI

### EGYPT

To the records made by themselves only we must look for accounts of the earliest civilization of the Egyptians. Of necessity therefore the first to be known is concerning a people already sufficiently advanced to have developed a written language, except as it may be carried back by traditions passed down from earlier times and subsequently recorded. Though the surroundings of the valley of the Nile suggest conditions under which a race of people might have developed in peace, secure against attacks from external enemies, history fails to reach such a time. Whether the ancient Egyptians, whose descendants still occupy the country, originated in Egypt or elsewhere cannot be answered from any reliable evidence. Like most people, they begin their account of their nation with a mythical line of supernatural rulers, and a time when the gods resided on earth and gave mortals the benefit of their instruction. If the truth be that the human race is the product of evolution from the lower to the higher, the advancement has not been steady and continuous with any people of whom we have a long history. Times of marked intellectual activity as well as of moral advancement have been followed by periods of torpor and degradation. It may therefore well happen, that at one period the people may look back to a prior time as a golden age, when men were wiser and better, and when the gods came nearer to them. Thus everywhere we find people looking to their ancestors for wisdom. The accumulation of knowledge at any period is the product of the past, for which prior generations must be given credit, and there is a tendency to credit it all to some favorite age. Whether the Egyptians were pioneers, in advance of all other people in civilization, cannot be stated with certainty, but that they have left unmistakable proofs of the antiquity of their

advancement, which antedate those of any other people may be safely asserted. Owing to the peculiar climate of the country and the desire to leave enduring monuments, the investigator of today may study at first hands the work of Egyptians who lived many thousands of years ago. He may read on granite monuments, or even on frail papyrus, the inscriptions of Egyptian artists and scribes in the original hieroglyphics as made by themselves long prior to the time of Moses or Joseph. The profound interest with which students of all the sciences to which they are related have in recent years studied these ancient records, and the diligence and success with which their efforts to decipher and interpret them have been rewarded, have added greatly to our knowledge of the past and of the arts, which before were traced only to people nearer to us in time and in blood.

The starting point, from which Egyptian history is written in modern times, is the reign of Menes, who united the upper and lower countries and established his capital at Memphis. The date of his reign is not definitely known, but it could not have been much later than 4000 B.C. and may have been much earlier. From his time a list of successive dynasties is given by ancient writers, and Herodotus tells us, that the priests read to him from a papyrus the names of 330 monarchs, who ruled as his successors to the reign of Moeris. After him came a great monarch, whose name he calls Sesostris. He also says that they told him that in the time of *Mén* (Menes), all Egypt except the Thebaic canton was a marsh, none of the land below lake Moeris then showing itself above the surface of the water. There are no records from which a connected account of the successive rulers can be constructed, and it is quite impossible to fix dates in the early reigns with any fair degree of accuracy. How many people were ruled over by Menes and what system of government had prevailed before his time, we do not know, nor can the state of the arts at that time be declared, nor the condition of the valley of the Nile be described further than that it was exceedingly fertile, then as now, and subject to yearly overflow from the river. Whether it then contained forests and waste

lands or was already cleared and cultivated is unknown. How long the people had then been dwellers in the valley of the Nile, whence they came and how they had lived in prior times, are questions that cannot be answered.

The contemporaneous inscriptions do not begin till about the time of what is termed the Fourth Dynasty, if the scholars are correct in their inferences. The three great pyramids of Gizeh, built as enduring tombs of successive Pharaohs, are assigned to this time. These great works evidence a numerous population, without whose labor they could not have been constructed, a strong government, able to command the services of the necessary workers, and also indicate peaceful relations with all other people, for war of any great magnitude would almost certainly have absorbed the attention and energies of the nation to too great a degree to allow such vast works to be carried forward at the same time. These monuments tell us with certainty that great numbers of people worked in concert for their completion, and that the government must have been firmly established and the people accustomed to the exercise of authority. The implements used in their construction prove that the art of metal working was well advanced. The power employed in transporting the material and placing it in position, as shown by the pictures and inscriptions, was mainly the combined strength of great numbers; but Herodotus tells us that machines were used for raising the great stones to their positions, and this seems probable, though we have no description of them. The pictures, which have been preserved, exhibit the evolution of dress from a simple short skirt, not much more to the purpose than a breech clout, to a costume consisting of a shirt, skirt, long over dress, sandals, wig, etc. It is not necessary to mention mere ornaments, for the lowest races all indulge in ornaments according to taste and ability, though clothing be considered a superfluous luxury or not thought of at all. At the time of the building of the great pyramids the evolution in dress was not much past the primary stage and short skirts were in fashion. In agriculture, though the implements used were crude, the variety of crops raised was quite extensive, and

the people were well supplied with cattle, sheep, goats and donkeys, as well as with fowls, especially geese and ducks.

In the earliest times of which we have any record, a division of the country into the upper or south and lower or north was recognized. The political organization of the upper country seems to have been in advance of that of the lower, and the internal development of it probably preceded that of the more marshy delta. While the government of Egypt was at all times monarchical in form, the actual administration was ordinarily in accordance with established rules, which were recognized as limitations on the power of the officials. The people, however, were without substantial guarantee against the oppression of despotic Pharaohs, and the construction of the great pyramids was a heavy burden, mercilessly imposed on his subjects by the king.

According to the earliest accounts, under what is termed the old empire, upper Egypt was divided into provinces, the local government of each of which was hereditary in a noble family. The same family also ordinarily held the office of high priest. In those times the nobility seem to have held a large share of political power, and the central authority to have been less potent than in later times. The division of lower Egypt into provinces or nomes appears to have followed later.

The character of the government was unmilitary. The worship of the gods, maintaining the temples and honoring the dead, occupied a large share of the attention of the government, and required the services of a numerous priesthood, always closely allied to the civil authorities, and who usually combined priestly functions with administrative ones. There were thirty "great men of the south" having unequal districts and powers. A governor of a district was also a judge and ruler of the chief town. It was the fashion to combine a long list of official titles, many of which were often without real significance. As judges they were priests of Ma'at the goddess of truth. Over these thirty chief men of the South was a governor of the south. The lower country was afterward divided into similar nomes and placed under a governor of the north country, but at what date these were established

does not appear, though the title of "governor of the north country" appears in inscriptions of the time of the Middle empire. In each of the small districts into which the country was divided, there was a court of justice, a storehouse for corn and local militia. The central power was mainly concerned with the revenue and filling the treasure houses. There was a central finance department, which employed numerous superintendents and scribes to attend to the collection and care of the public revenues, most of which were received in kind from the fields, mines and workshops. There was a superintendent of agriculture, who had general charge of matters connected with overflow and irrigation, and also a superintendent of the forests in the border country up the Nile.

The chief judge was the highest official under the king. He was the "leader of the great men of the south and of the north" and "second after the king in the court of the palace," to these were often added a long list of priestly and other titles, some of which indicated real power and substantial duties. Under him were numerous judges of different degrees. Six great courts are spoken of, made up of local judges. Great respect was entertained for law and the judicial offices.

In each province or nome there were officials of high and low degree charged with various public functions. As under most modern governments, there was a constant struggle to gain official preferment, and the main end of all public servants was the gathering of revenues for themselves and those under whom they served. The beneficial service rendered for the multitude was in public works, the administration of justice and protection against external enemies. Of the public works those connected with agriculture and the distribution of water by canals, reservoirs, etc. were highly useful, while the construction of temples and tombs, for which no other people seem to have had so much regard, gratified the pride and accorded with the sentiments of the people.

The monuments and records were made to preserve the memory of the rich and powerful. The inscriptions show the

state and surroundings of the nobility, their storehouses and servants. As the monuments, on which these inscriptions appear, were constructed under the orders of those whose memory they perpetuate or their friends, the purpose they subserve is primarily to attest their importance. What is shown of the condition of the lower orders of society, is merely as incident to the state of the chief. The old empire exhibits a nobility and priesthood with power over the peasants and serfs firmly established, much wealth and luxury for the higher orders, and settled habits of industry enforced on the poor. The middle empire shows an extension of the official system, but no marked change in the organization of society or in the theory of the government. How numerous a class of independent tradesmen or small land owners existed at any period cannot be definitely determined, though there appear to have been some such.

The Twelfth Dynasty, covering the period of about the twentieth and twenty-first centuries B.C., is spoken of as a time of good government, prosperity and advancement in learning. It was the classical age of letters, in which the standard of good writing was established. Afterward followed a period of weakness and decline, at the end of which the country was invaded by the Hyksos or shepherd kings from the northeast. The particulars of their invasion and rulership are not preserved, but it is clear that the ancient Egyptian people were not displaced, nor were the laws and customs of the invaders imposed on the conquered nation. They levied tribute and compelled submission to their power for a time.

The new empire began with Ahmose who drove out the Hyksos and followed them into the south of Palestine. Under his reign began the military age, in which Egyptian arms were carried into remote regions. Palestine and Asia Minor to the Euphrates were overrun by the monarchs of the Eighteenth and Nineteenth dynasties and the country to the south was subdued: Tribute was exacted from the conquered nations, but Egyptian civilization failed to take root and grow on any foreign soil. Contact with distant people had its effect on

the Egyptians, and the isolation in which they had apparently lived during all of the early dynasties was at an end. With varying success they fought the Asiatics on the north and the Ethiopians on the south. Thothmes III crossed the Euphrates and received tribute from many nations. Contact with distant people gave new ideas as well as tribute to the Egyptians. Amenhotep IV attempted to reform the religion and set up the worship of the Sun god as the only living god. He sought not merely to introduce the worship of this deity but also to destroy all the old gods. The change however failed to endure, and under his successors the old worship was restored.

Under Ramses II Egypt seems to have reached the zenith of its power, and of activity in the construction of temples and other great public works. With the departure of the Hyksos and the establishment of the new empire some changes in the organization of the government took place. The ancient nomarchs and local landed aristocracy gave way to royal officials, and landed property became concentrated in the possession of the king and the priesthood. This change is by some attributed to military rewards, incident to the wars against the Hyksos, but in Genesis it is recorded, that through the policy of Joseph in storing up a vast supply of grain during the seven years of plenty and then selling it to the people during the succeeding seven years of famine, Pharaoh came to own all the land except that belonging to the temples. With the ownership of all the landed property, from which the king exacted one-fifth for rent, his power became despotic, and there were no strong subjects to check it. The middle order disappeared, leaving the king and his officials at the top and a multitude of slaves at the base of the social structure. Military chiefs and foreign mercenary troops became conspicuous. It was possible for foreigners to hold high positions; thus Joseph was sold by his brethren to Potiphar, who placed him at the head of the household, and afterward Pharaoh raised him to the highest office under the crown. The family of Jacob came into Egypt in great favor, due to the influence of Joseph, but afterward were reduced to hard service under severe taskmasters.



A marked characteristic of the system of government was minuteness of details in official orders and reports. The scribe was always at hand to note down every item of revenue received, every expenditure from the treasury, as well as every public act of the officials. A large proportion of the population consisted of serfs and bondmen, organized by companies under overseers, who drove them to their tasks as mercilessly as is usual with slaveholders. The workmen were divided into companies of artisans and laborers in each different kind of employment, and were treated with rigor and contempt by their superiors. Above them were officials of all degrees from the chief of the company to the governor. The laborers employed in the tombs and on the public works received their rations from the public granaries and storehouses. Records kept by chief workmen are still extant, showing the names of the workmen, the days on which they worked and failed to work and the reasons for failure. Sometimes strikes were caused by delaying or withholding their rations. Herodotus says the people were divided into seven distinct classes. Priests, warriors, cowherds, swineherds, tradesmen, interpreters and boatmen. That interpreters should be mentioned as a class shows that in his time the intercourse with foreigners was very extensive, else there could have been no need of many of them.

The family ordinarily consisted of husband, wife and children. Polygamy was rare, though the rich made concubines of maid servants. Ramses II took three royal consorts. The marriage of sisters was practiced, and seems to have been of increased frequency after the Greek conquest, at least among the kings. Among the lower classes morals were very low, and marriages often informal and broken at pleasure. There was no seclusion of women as under Mohammedan rule. Except among the baser sort, the natural bonds of affection between parents and children appear to have been as strong as elsewhere, and a marked peculiarity of the people was their inordinate reverence for and care of the dead. This did not end with embalming the body and building a costly tomb, but the dead required a distinct department of the government.

Mothers nursed their children for three years, and in their early years kept them nude, but they had dolls and toys to play with. The school boy in ancient times was dressed with a girdle. Children of the upper classes were often sent away from home to school, even at a tender age. The school course included ethics, practical philosophy and manners. The road to political station was through the school, and the statesman must first become a scribe. A generous use of the rod was deemed essential to the proper development of the student. All classes appear to have shared to some extent in learning. Considering the great attention paid to letters by the Egyptians, it seems strange that connected histories have not been preserved to us. Fragments of official documents and correspondence and the inscriptions engraved on enduring monuments furnish the disjointed writings, from which the modern scholar must form his description of Egyptian civilization. They made much progress in astronomy, divided the year into 365 days and determined the direction of the poles with accuracy. In medicine the leading idea seems to have corresponded with that not long since abandoned, that the more filthy and repulsive the substance, the more potent as a medicine. Many and most gross superstitions, too numerous for even a general description, were indulged in by all classes of the people. Something like a picture of the times is exhibited by the record of a celebrated case which came up in the time of Ramses IX (about 1100 B.C.). Under the governor in Thebes, there was a "prince of the town" over the eastern part, and a "prince of the west" or "chief of the police of the necropolis" over the western part, the city of the dead. Complaint was entered by the prince of the town that tombs in the necropolis had been robbed. The court having jurisdiction of the case consisted of "Cha emuese the superintendent of the town and governor" assisted by Nesan-ni, scribe of Pharaoh and Neferckere-em-per-Amun the speaker of Pharaoh. A commission was appointed by the court to examine the tombs and report. This was done, and the report describes circumstantially what pyramids and mummy pits were examined. Out of ten, nine were found

uninjured. As to the other the commissioners reported "The pyramid of the King Sebekemsaf. It was found that the thieves had bored a mine and penetrated into the mummy chamber. They had made their way out of the outer hall of the tomb of Nebamun the superintendent of food under Thothmes III. It was found that the king's burial place had been robbed of the monarch; in the place also where the royal consort Nubch'as was buried the thieves had laid hands on her." "The governor and the prince vassals ordered a thorough examination to be made, and it was proved exactly by what means the thieves had laid hands on this king and on his royal consort."

The examination of the private tombs disclosed that those of two "singers of the high-priestess of Amon Re, King of the gods" had been broken into and other private tombs. "It was found that they had all been broken into by the thieves, they had torn the lords (*i.e.* the bodies), out of their coffins and out of their bandages, they had thrown them on the ground, they had stolen the household stuff which had been buried with them, together with the gold, silver and jewels found in their bandages." The commission so reported, and the prince of the necropolis sent in the names of the supposed thieves, who were immediately arrested. They were "examined," that is "beaten with stick on their hands and feet," until they confessed that they had entered the tomb of the king and taken rich ornaments of gold from the mummies of the king and queen and divided the booty among the eight robbers. To supplement and make good their confession they were required to identify the pyramid they had robbed. The governor and royal scribe commanded them to be taken in their presence to the necropolis, where they identified the tomb of Sebekemsaf as that to which their confession referred. The court thereupon made report to the Pharaoh, who alone could pronounce sentence in the case. Meanwhile the thieves were placed in custody of the high priest of Amon and confined in the prison of the temple! On suspicion of other desecrations a metal worker of bad repute was arrested and "examined." He confessed that he had been in

the tomb of Ese, wife of Ramses II but, when taken to show the scene of his crime, he pointed out the graves of the children of Ramses II, in which no one had been buried. Thereafter, "the princess examined the tombs and the large chambers in the place of the beauties, in which the beautiful royal children, the royal consorts, the royal mothers and fathers of the mothers of the Pharaoh rest. They were found uninjured." Thereupon there was great rejoicing and a "great embassy to the town consisting of the inspectors, the chiefs of the workmen of the necropolis, the officers of the police, the police and all the bondservants of the necropolis of western Thebes."

Three years later, other robberies having occurred, about sixty arrests were made, including many officials of low rank, a scribe of the treasury of Amon, a priest of Amon and one of Chons. They had robbed the outer chambers of the tombs of Ramses II and Sety I and sold the stolen property. A quarrel over the division of the spoils led to the discovery. This capture did not end the thefts, and it was finally determined to abandon the tombs in the desert in order to save the mummies. These were moved from place to place, and finally concealed in a deep rocky pit in the mountains of Der-el-bahri, where they reposed until modern robbers found the pit in 1875, and in 1881 the authorities were informed of it, and the mummies of all the great monarchs of the new empire were brought to light. Great regard for the remains of the dead is not exclusively a trait of the Egyptians, but they were more lavish in their expenditures for the preservation of the bodies of the dead than any other people. As the occurrences above mentioned show, their care did not end with embalming the bodies and building vast tombs for them, but continued in watching and preserving the necropolis from generation to generation.

Under the old empire there were six courts of justice or great houses, at the head of which was a chief judge. Each of the "thirty great men of the south" was a judge and district chief and a member of one of the great houses. The "governor of the south" alone had a seat in all. These great

men had served as scribes and inferior officers of the court before promotion to the full dignity of judges. Besides these there were local judges in the towns. The special god of the judges was Ma'at the goddess of truth. All judges of high rank served as her high priests. During the middle empire this organization of the courts disappeared. While the office of chief judge continued, even under the New Empire, the six great houses were no more. Under the new empire the composition of the courts varied from time to time, including priests and laymen in varying proportions, but courts were held at fixed places where justice was regularly administered. The procedure seems to have been simple. The court being seated the contending parties in civil cases came before it standing. The plaintiff first preferred his complaint orally, the defendant was then required to answer, after which the court gave judgment. The successful party then turned to the other party and stated to him the terms of the judgment, whereupon the loser said, "I do it, indeed I do it, I do it." What process followed in case of failure to perform is not clear.

In criminal cases the governor preferred the accusation as plaintiff, and the defendant then answered to it, thereupon the court seems to have filled the place substantially of a jury and found the prisoner guilty or not guilty, this finding was then forwarded to the Pharaoh, who pronounced sentence.

That the Egyptians had written laws there seems no reasonable doubt, and it was claimed that they were composed by Thoth, the god of wisdom. The ancient law books have not been preserved and their contents come down to us only in fragments. However complete the written laws may have been, they do not appear to have restrained the kings who chose to override them, yet respect for the forms of law seems to have had quite a firm hold. Thus Pepy, in the Sixth Dynasty, established a special court to inquire into the acts of some of his courtiers, and Ramses III created a special court to try members of his household, who had conspired against him. The record of the court of the proceedings against one of the conspirators is a model of brevity.

"Penture formerly bore another name. He was brought before the court, because he had joined with his mother Tey, when she conspired with the women of the harem, and because he acted with hostility against his lord. He was brought before the vassals that they might question him. They found him guilty, they dismissed him to his house; he took his own life." Before this investigation was closed an incident occurred, which reflects severely on the special court organized for the investigation. It was discovered that the accused women of the harem had sought out three members of the commission and, with them and Pa'ies, the chief culprit, had "made a beer house," that is, held a revel. But they also were apprehended, and "their punishment was fulfilled by the cutting off of their noses and ears."

While the power of Egypt continued to be great, it was not extended after Ramses II. During the Twenty-fifth Dynasty Egypt was ruled by Ethiopian kings, who however were not strangers to Egyptian civilization, if indeed they were not of Egyptian blood. At intervals after the time of Ramses there were wars with the Assyrians with varying success, till in the year 662 B.C. Egypt became an Assyrian province. Eight years later, however, with the aid of Greek mercenaries they were driven out. Psammetichus founded the Twenty-sixth Dynasty, which endured a little more than a century. During this period there was much intercourse with the Greeks.

In 525 B.C. Cambyses invaded Egypt and reduced it to a Persian province. In the reign of Artaxerxes the Egyptians revolted and were aided by the Athenians, but without success. About 411 B.C. another revolt proved successful and Egypt remained an independent kingdom till about 343 B.C. when it was again overrun by the Persians, who maintained their ascendancy till Alexander's conquest. Though under the Ptolemies Egypt was again an independent kingdom, it was under Greek rulership. When the Romans came the rulership passed into their hands, and since their time there has been no such nation as Egypt. Though the land, the river and people are to all appearances substantially the same, the spirit is wanting, and Egypt has been dead for more than two

thousand years. Indeed the peculiar civilization, which still astonishes the world by its enduring monuments, can hardly be said to have existed in full vigor much later than the twelfth century B.C.

With the rise of the Asiatic and European nations, the military spirit of the Egyptians developed for a time, and their power was extended in all directions, yet though the Greeks borrowed their arts and their learning, and the light of their ancient civilization spread into Europe and Asia Minor, they planted no colonies which presented new and advancing types of the mother country. Nor to this day has the civilization peculiar to any other country taken firm root in Egypt. To all appearances the fellah of today is very nearly what his ancestor of three thousand years ago was, but the ruling spirits, who planned the great works and ordered the affairs of Egypt, are no more. The peasant serf is there, oppressed through taxation as severely as his ancestors were under the Pharaohs. He has learned to submit without resistance to the burdens imposed by foreign masters, as his forefathers submitted to the orders of Cheops in building a pyramid. Unlike the Chinese, the Egyptians have never been able to impose the spirit of their civilization on their conquerors, nor on the other hand have the conquerors been able to imbue new life into their subjects and by education develop a new civilization. The greatest marvel is that with the constant influx of Europeans and Asiatics into the rich valley, the type of man dwelling there has been modified to so slight a degree. The valley of the lower Nile is the tomb of a once great people, and the toiling peasants of today are hardly better representatives of the ancient spirit than the mummies, which have been preserved with so much care through the long centuries. Since the Greek conquest the government and laws of Egypt have been such as a foreign ruler has seen fit to impose.

In recent years there has been an awakening of a national spirit in Egypt, and as a result of the political upheavals following the great war nominal, if not complete, independence has been achieved.

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## CHAPTER VII

### CHALDEA, BABYLONIA, JUDEA AND PERSIA

While only a small part of the people of Europe trace their descent from inhabitants of the territory in Asia now dominated by the Turks, religious teachings have caused them to regard some spot in or near this territory as the earliest home, not only of their own progenitors, but also of the whole human race. Egyptian civilization had its influence on Greeks and Romans, yet it has been far less regarded than that of the early people of the valleys of the Euphrates and Tigris and the region bordering on the eastern end of the Mediterranean. It is impossible to accurately measure the extent to which the religion, morals, laws and governments now existing, not only throughout Europe but wherever Europeans dominate, have been moulded by the lessons transmitted to us from those people. Comparative philology teaches the kinship of people long supposed to be altogether foreign to each other, and the Persians, Brahmans of India, Germans and allied people of Europe are all assigned to one race. Nevertheless the influence of the civilization of ancient Chaldea, Babylonia, Persia, Media, Assyria, Palestine, Phoenicia and Greek Asia has not descended to us with the blood of ancestors but mainly by example and teachings. The Biblical account of creation fills a space which substantially all people fill with fanciful and romantic accounts of a beginning. Belief in a particular account usually depends on the educational influences to which the individual is subjected. Records reaching back to the origin of any race of people are of necessity wholly lacking.

The earliest clear evidence of man and his works in the regions named is derived from the ruins of ancient cities. The oldest of these of which we have knowledge are of the Chaldeans, who occupied the lower valley of the Euphrates

and Tigris and neighboring country. According to the Bible, the Israelites derived their origin from the city of Ur in Chaldea. "And Terah took Abram his son and Lot the son of Haran his son's son and Sarai his daughter-in-law, his son Abram's wife, and they went forth with them from Ur of the Chaldees to go unto the land of Canaan, and they came unto Haran and dwelt there".<sup>1</sup>

The first people of whom any accounts are attainable, were familiar with the leading mechanical arts, the use of money, the cultivation of the soil, the use of domestic animals and the art of writing. As in Egypt formal written contracts were common and are found on the clay tablets disclosed by recent excavations. Abraham bought land and paid for it in silver. There were cities and villages, merchants and traders as well as hunters, herdsmen and husbandmen. How much or what part of their arts, if any, were borrowed is not known. The earliest records introduce us to the land of Shinar with its cities of Babel, Erech, Accad and Calneh and out of this country went forth Asshur and builded Nineveh.

From the earliest times throughout the whole region we are considering, with some exceptions hereafter noticed, the character of the governments, of which we have historic account, was military despotism without check or limitation on the power of the kings. Nothing can be more dreary than the recital of the rise and fall of successive dynasties, always tending to reproduce the same evils. Through the ancient tablets and cylinders, the Bible and the writings of historians, we are informed of the names and the military feats of many rulers styled successively, Chaldees, Babylonians, Assyrians, Medes, Persians, Parthians, Scythians, Bactrians, Arabs, Turks and Tartars. With all of them the fundamental idea of government has been similar if not identical, paternal kingly power. While this is clearly apparent, the structure of society at different periods has undoubtedly passed through many changes and modifications. These, owing to the vanity of kings and the lack of independent historians, are difficult to trace. The influence of the priesthood and of the religious

<sup>1</sup> Genesis XI-31.

beliefs of the people has always been very great, and it is to this portion of the earth and neighboring portions of Asia, that we look as the birthplace of all the great religious systems, which have so profoundly impressed mankind, and which are now taught throughout the world. Moses, Zoroaster, Buddha, Christ and Mohammed have successively taught lessons which are accepted by generation after generation as the direct and authoritative expression of divine truth. The profound influence of these various teachings, not only on private morals but on governments, human laws, customs and the structure of society, is to be noticed everywhere. In the earliest times of which we have accounts, we find the people prone to have a special god or gods for each tribe or nation which gained a well defined status as such. The early Hebrews did not deny the existence of other gods besides Jehovah, but maintained his superiority. The Old Testament mentions numerous gods of the people with whom the Israelites contended, as really existing, but unworthy to be followed. The people were taught to be faithful to their own god. It is impossible to assign a date for the earliest general adoption of a belief in a single god, not only supreme in power but without rival or participant in authority. This singleness of spiritual power accorded with the human despotisms, which have flourished in that region, and contrasts with the sprightly pantheon of the Greeks, who were experimentalists and jealous of unrestrained authority. With an absolute despot at the head of the government, the distribution of inferior and local authority was on the same principle. Wherever the king delegated his power to a satrap of a district, he ruled as a despot, accountable only to the king. The general purpose of all the different rulers, of whatever particular nation they chanced to come, in extending their dominions, was to collect tribute. There seems to have been very little disposition to interfere with the modes of life of the people or the local governments, so long as the tribute was paid. Egyptian conquest in Asia merely meant tribute from Asia to the Pharaoh, and when Egypt became subject to the Assyrians, and afterward the Persians, Egypt paid tribute to

the king. The taxes were collected by the local authorities, and the satrap accounted to the king for the full sum charged to his districts. Some things relating to the primary organization of society are known, polygamy and slavery were everywhere and at all times allowed. Surplus males were consumed in wars or converted into eunuchs for domestic service. The families and dependents of the rich were very numerous. Abraham's household as described in the Bible is doubtless typical of ancient as of modern patriarchal families. It is not to be understood, however, that all the people were included as members of such establishments. Babylon and Nineveh were very great cities. In order to maintain their vast multitudes of people, agriculture was carried on with great industry and success. Manufacturing flourished, and trade was extended to distant lands. The descriptions we have of the people of Babylon indicate that it had a vast combination of good and evil, like every other great city. That the people were industrious, skillful and intelligent is abundantly proved by history and the ruins still remaining. That they were fond of luxurious living and addicted to many vices hardly differentiates them from the dwellers in modern cities, yet some of their customs certainly appear most abominable.

The recent discovery of the Code of Hammurabi affords us a copy of the written law of Babylon promulgated about 2250 years B.C. (Still more recent researches on the site of ancient Assur have brought to light tablets inscribed with parts of the Assyrian code, considerable fragments of which have been translated. Full summaries of the available parts of these codes are given in the appendix.) There is no better index of the state of the civilization of a people than the code of laws under which they live. It indicates their industrial and business activities, their vices, their superstitions and their views of social duty. How long these codes remained in force we are not informed. It was probably 1800 years later than the time of Hammurabi when Herodotus visited Babylon and many changes had taken place.

He tells us that once in each year in each village the maid-

ens of age to marry were collected all together in one place, while the men stood around them in a circle. The women were then sold for wives separately to the highest bidder. The rich Babylonians had to bid against each other for the favorite ones, each going to the highest bidder. When all the beauties were sold and the men ceased to bid, the ugly ones were sold to those who would take them with the least marriage portion, which was made up from the prices received from the sale of the loveliest. He mentions this as an excellent custom, but says it had fallen into disuse in his time, and that instead, the poor of the common people raised their daughters to be courtesans. This he attributes to the oppression of the rulers. He relates what he terms a most shameful custom connected with the worship of the Babylonian Venus. "Every woman born in the country must once in her life go and sit down in the precinct of Venus and there consort with a stranger." Seated in the enclosure of the temple with wreaths of strings about her head she must wait till a stranger throws her a coin and says "The goddess Mylitta prosper thee." She must then go with him whoever he be. He adds, that when this religious rite has been performed, no gift however great will prevail with her. This hardly seems a fair statement after reading what is said of the prevalence of prostitution.

It seems reasonably certain that public morals were low at and after the time of which Herodotus wrote, and very probable that they were never high. The Old Testament is filled with narrations of the vile customs of the early Israelites as well as of the people with whom they came in contact, of whom apparently the Egyptians were the best, yet pure domestic life was not wholly unknown. Away from the cities and perhaps also within them the village system prevailed. The people lived under great diversity of conditions.

Xenophon describes an Armenian village with houses underground entered by a well, with passage into them for their cattle, goats, sheep and fowls. There was a head man of the village. Seventeen colts bred as a tribute for the king, and provisions in plenty and considerable variety were found.

In his march from the scene of the battle in which Cyrus was killed to Colchis, Xenophon mentions the villages of the Medes, Carducians and Armenians, but nowhere isolated dwellings. The Persians had some idea of established law beyond mere custom, and of the steady adherence to fixed rules for the determination of rights. Their laws were promulgated by the king, recorded by scribes, and proclaimed throughout the empire. There were judges appointed by the king. Herodotus says that Cambyses, wishing to marry his sister, a thing contrary to Persian custom,

"Called together the regal judges and put it to them 'whether there was any law which allowed a brother, if he wished, to marry his sister.' Now the royal judges are certain picked men among the Persians, who hold their office for life, or until they are found guilty of some misconduct. By them justice is administered in Persia and they are the interpreters of the old laws, all disputes being referred to their decision. When Cambyses therefore put this question to these judges, they gave him an answer which was at once true and safe, "they did not find any law," they said, "allowing a brother to take his sister to wife, but they found a law that the king of the Persians might do whatever he pleased."

While the Persian system was loose and imposed but little restraint on the satraps, either in the exercise of their authority over the people under them or in organizing a revolt, there were some regulations tending to efficiency and stability of the government. Royal commissioners were sometimes sent to inspect the workings of the government throughout the empire, and a system of posts was maintained by which dispatches were forwarded rapidly. The garrisons in the citadels, as well as the army in general, were under the command of officers appointed by the king and not subject to the satraps. As all histories deal so much with wars and so little with peaceful conditions, we have to infer what took place in times of peace from the conditions described during times of war. In the perspective war occupies a greatly exaggerated space and creates the impression that the people were engaged in little else than fighting, when in fact peace was the rule.

The earliest Babylonians were temple builders and devoted to their gods. Strong religious tendencies have ever been characteristic of the people of all the portion of Asia of which we are now treating. The idea of government seems to have persistently adhered to a single unlimited monarch. With the grosser forms of religious worship and with the corrupted organizations which profess the purer ones, form and ceremonial always fill a great space. These forms, to be impressive, must be marked out and defined by fixed rules, to which the people become accustomed. Revenues to maintain the priesthood and the temples must be derived by a system of tributes, paid really to the priests, but exacted in the name of the deities. The alliance between the sovereign and the priesthood was necessarily close and, during much of the time, the king was the spiritual as well as the temporal head. In ancient Assyria the laws were promulgated in the name of Asshur, the head of their pantheon, as the Jews used the name of Jehovah to give sanction to theirs. The temples of the Assyrian and Babylonian gods required the attendance of a numerous priesthood, withdrawn partly and often entirely both from participation in military operations and ordinary callings. The system of irrigation by the aid of artificial canals, under which the valleys of the Tigris and Euphrates were brought to a high state of cultivation, evidences settled social order for a considerable period prior to the time of Hammurabi. The cities themselves could only come into existence under conditions of order and security to person and property.

Recent researches have thrown much light on ancient Babylonian institutions, and many ancient tablets on which were written deeds and contracts of various kinds have been examined and interpreted. Judicial functions were exercised by the priesthood, who also acted in the capacity of notaries and witnesses of written contracts, and the parties took an oath to perform the contract, the whole being attested by the priest and other witnesses. A deed to property seems to have been generally treated as a mortgage, which could be discharged on repayment of the purchase price, unless the

vendor expressly renounced the right to redeem, in the deed. Even this did not cut off the right of his heir to recover the land by paying back the price. Sometimes the heirs joined in the deed in order to cut off the right of redemption. Mortgages were familiar, the earliest form being that in which the use of land was transferred to the lender for the use of the money, rent being set off against interest. When the money was repaid the land was returned. Mortgages of lands and chattels were common. The business of banking was well developed and seems to have been largely in the hands of the priesthood. Interest was allowed and bottomry bonds, bearing a high rate but under which the lender got nothing in case of loss of the property by shipwreck, were common, as also were contracts of hiring, lease, partnership and other business transactions, and were executed with that freedom which always obtains in a great commercial city.

In religion these people were polytheists, and their pantheon was as well stocked as that of the imaginative Greeks. The personal qualities attributed to their several gods were so similar in many instances as to suggest identity. The genius for city building moved from the valleys of these rivers to the countries bordering on the Euxine and Mediterranean seas and afterward spread wherever the Greeks became dominant. But, so far as we know, the genius for popular government in cities was never developed in Asia, except in the Greek cities near the coast. Among the rural population, dwelling in their villages, tilling the soil and rearing domestic animals, there was a degree of independence. Herodotus speaks of the Medes revolting from the Assyrians and gaining their freedom, after having been subject to the latter for 520 years, and then tells how Duoces by playing the part of an upright judge succeeded in gaining kingly power. Herodotus saw through Greek eyes. Though Medes and Persians were fond of liberty perhaps in their early history, they had no genius for the establishment of any form of government other than that of an arbitrary despotism.



## JUDEA

The Jews afford us through the Bible a later and more complete system of written laws than that of Hammurabi. Some of it was similar to and borrowed from Egypt's older civilization. Some of it was drawn from Babylon. All their laws, whether prescribing rules of conduct governing the relations between individuals or declaring religious duties and imposing burdens for the support of the priesthood, were promulgated as divine commands. The religious veneration, with which everything found in the Hebrew records has been regarded by the Christian world, renders it difficult to dispassionately attempt to separate the truth of history from the setting of oriental exaggeration in which it is contained. When or by whom the writings passing under the name of the books of Moses were written is unknown. It can be said however, with confidence, that all the Old Testament has come down to us through the Jewish priesthood. Whether the regulations to be found in the five books attributed to Moses were in fact promulgated by him or not, it is clear that there was a concurrence in establishing these laws of both the temporal and the spiritual head of the Israelites. The authority which the people recognized was not Moses nor Aaron, but the unseen God, from whom it was proclaimed that the commands emanated. The purpose of all conscientious legislators is to find and declare the rules which tend to promote the welfare of all. Many of the regulations contained in the laws attributed to Moses would appear to have but little application to a wandering horde, such as the Israelites were in their journey from Egypt to Palestine. It is not recorded that they then acquired any territory for the purpose of permanent occupancy, yet there are very definite laws concerning real property. The people must have been very filthy and immoral, for a large part of the religious observances enjoined tend to cleanliness and orderly conduct. That their wealth consisted largely of cattle, sheep and other live stock is evidenced by the extent of the regulations concerning such property. Pigeons seem to have been extensively bred and were much used in the offerings.

The ten commandments are written as the words of God repeated by Moses. The first four relate solely to matters of religion, but are regarded as authoritative and binding throughout Christendom today, and Sunday is observed as the Sabbath of his law. The fifth is an admonition to respect parents, more or less regarded. The remaining five are universally regarded as binding moral laws, the violation of either of which is a sin. While these commandments have been held of such high authority by all Christians, the other laws declared by Moses are not so well respected. Slavery even of Hebrews was recognized.

"If thou buy an Hebrew servant, six years he shall serve and in the seventh he shall go free for nothing." If bought with a wife, the wife went free with him, but if given a wife by the master, the wife and her children belonged to the master. "And if the servant shall plainly say I love my master, my wife and my children I will not go out free, then his master shall bring him unto the judges, he shall also bring him to the door or unto the door post; and his master shall bore his ear through with an awl, and he shall serve him forever."

Daughters sold as servants were not given their freedom but, if taken to wife by the master or his son, were to be treated as wives and not sold to a strange nation. Murder of malice was punished with death, but a sanctuary was allowed for excusable homicide. The law of domestic relations inculcated respect for both father and mother. Polygamy was permitted and in some instances almost compulsory. Marriage was encouraged, and a newly married man was exempt from going to war for a year. If brethren dwelt together and one of them died childless, the surviving brother should marry the widow, and her first born should succeed in the name of the dead brother. If the survivor refused to marry the widow, she might call him before the elders and have him condemned, and in their presence she shall "Loose his shoe from off his foot, and spit in his face and shall answer and say, So shall it be done unto that man that will not build up his brother's house."

The law of divorce was that, "When a man hath taken a wife and married her, and it come to pass that she find no favor in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement and give it in her hand and send her out of the house." She may then marry again.<sup>2</sup>

In Numbers chapter v. a provision is made for testing the faithfulness of a woman whose husband is jealous of her, which is similar to and probably suggested the medieval trials by ordeal. The status of women was not wholly dissimilar to that under the English common law. The vows (contracts) of men were binding, but those of unmarried daughters might be annulled by the fathers and of married women by their husbands on the day when made, otherwise they should stand. Widows and divorced women were bound.

The law of inheritance, as first established, seems to have recognized the rights of males only, but on the complaint of the daughters of Zellophehad it was amended as follows: "If a man die and have no son, then ye shall cause his inheritance to pass unto his daughters. And if he have no daughters, then ye shall give his inheritance unto his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family."<sup>3</sup>

There was a settled policy, well calculated to preserve to each family its inheritance and prevent the crafty from permanently engrossing the land or chattel property. Every fiftieth year was a year of jubilee, when all inheritances of land went back to the vendor. A sale could only be made till the next jubilee, except in walled towns, where a redemption in a year was allowed. A similar principle was thus applied to chattels.

"At the end of every seven years thou shalt make a release. And this is the manner of the release. Everyone that lendeth aught unto his neighbor shall release it, he shall not exact

<sup>2</sup> Deut. xxiv. 1-2.

<sup>3</sup> Numbers xxvii.

it of his neighbor or of his brother because it is called the Lord's release. Of a foreigner thou mayest exact it again."<sup>4</sup>

"And six years thou shalt sow thy land and shalt gather in the fruits thereof. But the seventh year thou shalt let it rest and lie still that the poor of thy people may eat: and what they leave the beasts of the field shall eat. In like manner thou shalt deal with thy vineyard and thy oliveyard."<sup>5</sup>

Usury was strictly forbidden except when taken from strangers, and pledges of raiment must be returned by sundown. For all manner of trespasses the parties should come before the judges and the party condemned should pay double. The protection of servants against the cruelty of masters was exceedingly meager. "And if a man smite his servant or his maid with a rod and he die under his hand, he shall surely be punished. Notwithstanding if he continue a day or two he shall not be punished for he is his money."

If a man put out the eye or tooth of a man or maid servant he or she shall go free. If an ox kill a person the ox must be killed, but, if the ox has been wont to push with his horn in time past, the owner shall be put to death unless he pays his ransom. If the ox kill a servant, the owner of the ox shall pay the master thirty *shekels* of silver. A thief must pay three for one for an ox and four for one for a sheep; and if caught in the act and killed, no blood shall be shed for him. A party caught with stolen property must pay double.

The criminal law was primitive and merciless. The punishments were death, maiming, beating or fine. The following offenses were punished with death: Murder, manstealing, cursing father or mother, adultery (both parties), witchcraft, lying with a beast, idolatry.

"If thy brother the son of thy mother or thy son or thy daughter or the wife of thy bosom or thy friend who is as thine own soul, entice thee secretly saying, Let us go and serve other gods which thou hast not known, thou nor thy fathers," thou shalt not consent "But thou shalt surely kill

<sup>4</sup> Deut. xv. 1-2-3.

<sup>5</sup> Exodus xxiii. 10 and 11.

him, thine hand shall be first upon him to put him to death and afterward the hand of all the people." The father and mother of a "stubborn and rebellious son" might bring him before the elders at the gate of the city and have him condemned to be stoned to death. It hardly seems possible that there could be use for such a law.

For offenses deemed of inferior degree the *lex talionis* had full sway, and is nearly identical with the code of Hammurabi.

"Eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."

Very definite and minute provision was made as to what might be eaten and as to the manner in which animals should be slaughtered for food and the use of the different parts. These were in part sanitary regulations but more to insure the priests their living.

"The priests, the Levites and all the tribe of Levi shall have no part nor inheritance therein with Israel. They shall eat the offerings of the Lord made by fire and his inheritance."<sup>6</sup>

By far the greater space in the law is occupied with regulations relating to religion and religious ceremonies, and great care is taken to insure the maintenance and influence of the priesthood. All the books, especially that of Leviticus, contain very numerous rules relating to burnt offerings, meat offerings, peace offerings, sin offerings, trespass offerings, first fruits and other offerings from which the priests were supported. The priestly dress was regulated. The Levites were assigned cities (villages) with suburbs for their cattle, among which were six cities of refuge for criminals, into which the avenger of blood might not pursue one guilty of homicide, unless committed with premeditation. The priesthood was the instrumentality mainly relied on by Moses for the maintenance of his system, which in this respect strongly resembled the Egyptian. The observance of his laws would keep the priests in close contact with all the people substantially all the time, and obedience to all these minute regulations was enjoined as a religious duty.

Among the most remarkable provisions in the laws of

<sup>6</sup> Deut. xviii. 9.

Moses are those imposing restrictions on the rulers, and providing for the promulgation and perpetuation of a code of written laws by which the rights of all were to be measured. The people were permitted to have kings, like as other nations, but with limitations on their powers.

"But he shall not multiply horses to himself nor cause the people to return to Egypt to the end that he should multiply horses, forasmuch as the Lord hath said unto you, Ye shall henceforth return no more that way. Neither shall he multiply wives to himself that his heart turn not away, neither shall he greatly multiply silver and gold. And it shall be when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book, out of that which is before the priests, the Levites. And it shall be with him, and he shall read therein all the days of his life."<sup>7</sup>

"Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee throughout thy tribes, and they shall judge the people with just judgment. Thou shalt not wrest judgment, thou shalt not respect persons, neither take a gift, for a gift doth blind the eyes of the wise and pervert the words of the righteous."<sup>8</sup>

Appeals from inferior to superior courts were provided for.

"If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea and between stroke and stroke, being matter of controversy within thy gates, then shalt thou arise and get thee up into the place which the Lord thy God shall choose. And thou shalt come unto the priests, the Levites, and unto the judge that shall be in those days and inquire, and they shall shew thee the sentence of judgment. And thou shalt do according to the sentence which they of that place which the Lord shall choose shall shew thee."<sup>9</sup> In the determination of criminal causes the rule concerning the amount of evidence required was, "One witness shall not rise up against a man for any iniquity or for any sin that he sinneth; at the mouth of two wit-

<sup>7</sup> Deut. xvii. 16 and 19.

<sup>8</sup> Deut. xvii. 8-9-10.

<sup>9</sup> Deut. xxi. 18-19.

nesses or at the mouth of three witnesses shall the matter be established."<sup>10</sup>

Although the date of Moses' death is assigned to about the year 1450 B.C. and although the little nation for which he framed his laws was often at the mercy of its foes, in captivity and finally scattered over the face of the earth as outcasts, his laws are to be found at this day in the households of millions of alien people in apparently complete form. This seems in some measure due to the provisions made by him for their preservation, but more to their religious sanction and the promulgation of the laws as the word of the God who watched over the Israelites as his chosen people and yet more to the spread of Christianity. The people were commanded by Moses after they should pass over Jordan to set up great stones and plaster them and "write upon the stones all the words of this law very plainly." Blessings were called down on all who obeyed and curses on those who disobeyed. "And Moses wrote this law and delivered it unto the priests, the sons of Levi, which bore the ark of the covenant of the Lord, and unto all the elders of Israel and Moses commanded them saying, At the end of every seven years in the solemnity of the year of release in the feast of the tabernacle, when all Israel is come to appear before the Lord thy God in the place which he shall choose, thou shalt read this law before all Israel in their hearing."<sup>11</sup>

In the early days authority was exercised by the priests, and the general in time of war, but there was no king.

"In those days there was no king in Israel, every man did that which was right in his own eyes."<sup>12</sup>

(B.C. 1400.) Afterward when Samuel was chief priest the people wanted a king.

"Then all the elders of Israel gathered themselves together and came to Samuel unto Ramah, and said unto him, Behold thou art old and thy sons walk not in thy ways, now make us a king to judge us like all the nations. But the thing

<sup>10</sup> Deut. xix. 15.

<sup>11</sup> Judges xxi. 25.

<sup>12</sup> Deut. xxxi. 9-10-11.

displeased Samuel." He told them the evil consequences of having a king but they insisted.<sup>18</sup>

Saul was then made king. "And all the people shouted and said God save the king." Saul's authority was not fully recognized however, and it was not till David was anointed that the kingly authority was established. Under his son Solomon the nation attained its maximum of wealth and power, which, as compared with that of either Egypt, Babylon, Assyria or Persia at its best, was not great. Though the written law of Moses seems to have been preserved intact, it does not appear to have ever been very rigidly observed, nor to have been eminently successful as a religious establishment. Even Solomon, the model of all Hebrew Kings, violated the law by greatly multiplying his riches, and by taking to himself a vast number of wives (700), and concubines (300). In the accumulation of his harem he did not confine himself to selections from the twelve tribes, but gathered from among the heathens, and as a result became tolerant of all the gods and erected places for the worship of other Gods besides Jehovah. Throughout much of the Old Testament there is constant recognition of the existence of Baal and numerous other gods, but Jehovah was the special god of Israel, from whom alone they might hope for help. The Bible records many times when the people generally abandoned the worship of God and adopted that of the gods of other people. The lesson constantly taught is that this was always followed by disaster, and that prosperity only came through strict adherence to the national worship. The history of the Israelites from the time of Moses to the days of Christ, is an alternation of peace and war, adherence to the Mosaic law and abandonment of it, success and adversity, independence and subjection to foreign power, corresponding in all material respects to that of surrounding nations. In morals they do not seem to have been materially above or below the general average of their neighbors. In power and material development they were quite insignificant as compared with the Chaldeans, Babylon-

<sup>18</sup> 1 Samuel viii.



ians, Assyrians, Persians or Egyptians. Jerusalem at its best was but a village as compared with Babylon or Nineveh. Yet the influence of this small nation on succeeding generations has vastly exceeded that of all the others combined. This influence is due, first to the preservation of the Mosaic law and, second but far more, to the Christian teachings of the new law of love and mutual help.

We regard the present as an age of invention in Europe and America. It is not the first however. While we cannot definitely fix time or place nor speak on the subject with absolute certainty, all we do know indicates that there was, before the days of Moses, a period of great mental activity and invention. The foundations of modern achievements seem to have been laid somewhere in or near the regions treated of in this chapter. The art of smelting iron, copper and many other metals was carried to an advanced state of perfection. Architecture produced immense structures in which the beautiful sought expression in accordance with the taste of the times. The art of weaving fabrics was developed. Hydraulic engineering achieved triumphs little if any short of those boasted by modern engineers, and the rich country of the Tigris and Euphrates, which now lies desolate from lack of the ancient system by which the waters of the rivers were utilized, was then a vast garden, rivaling if not leading in productiveness the most favored portions of the globe in any age. But more valuable than all these was the invention of letters, since changed in form and number by different people, yet affording the foundation of all written language in the western world. Of all the literary people the Chinese alone can claim the invention of another separate and complete system of written characters. Whether any of these inventions were made under the despotic governments of which history informs us cannot be told. Letters do not record the time, place or manner of their own creation.

It seems strange that so little definite history or description of the government of the Phoenicians can be given. They were renowned for manufactures and commerce. Their ships went to all ports of the Mediterranean Sea, but their colonies

were mostly on the African side. The accounts of Carthage received from Roman sources are doubtless much colored by their hostility.

The dynasty established as a sequence of Alexander's conquest did not long retain marked Greek characteristics, but soon degenerated and became in fact a typical oriental despotism. The Greeks adopted Persian customs rather than imposed their own. There were Greek cities along the coasts where Greek civilization prevailed for many centuries. Following the downfall of Macedonian supremacy came the Roman conquest of the country west of the Euphrates. Toward the east the Persians with varying fortunes and under numerous dynasties have during most of the time maintained their supremacy. But whether the ruler was Persian, Mede, Bactrian, Turk, Mogul or Moslem, he has always been a despot, sometimes a wellmeaning and sometimes an able one, but usually a cruel, idle voluptuary. The advent of Christ had little effect on the political conditions of the country of his birth. Not till the Crusades was an attempt made to assert temporal authority there in his name. The influence of his teachings, though not wholly wasted in Asia, was far less potent than that of Mohammed, whose system was better suited to oriental tastes and character.

The difficulty with all their systems was that no effectual check was provided against the exercise of arbitrary power. Those who are inclined to clamor for speedy justice may read of striking illustrations of it in the book of Daniel, where the story is told of the retributive justice meted out to Daniel's accusers, who were thrown into the lion's den and torn to pieces by the king's command, or in the book of Esther in which is recorded the hanging of Haman on the gallows he erected for Mordecai, and the license given to and used by the Jews by command of Ahasuerus to slaughter their enemies. The king and his satraps were really restrained only by their own feelings or interests and constantly exercised arbitrarily the power to put to death, often in cruel ways, and to seize the property of their subjects.

The theory of the Persian government remained despotic

till very recent times, but modern influences have been felt in the land of the ancient despotism. On August 5, 1906 Muzaffar-ud-Din, Shah, issued a rescript undertaking to form a national council—Majlis—representing the whole people. The Majlis was elected and opened by the shah in person on October 7, 1906. Muzaffer died in January 1907 and his son Mohammed Ali Mirza on his accession to the throne pledged himself to support the constitution. A revolution occasioned by a clash between the shah and the Majlis resulted in the deposition of Ali and the choice of his young son Ahmad Mirza. On November 15, 1909 a newly elected Majlis was opened by the shah.

The Majlis is composed of representatives of the dominant classes and numbers 162 members (sixty from Teheren and 102 from the provinces). Electors must be males, Persian subjects not less than twenty-five years old and of good repute. The executive government is carried on by a cabinet of eight ministers.

## CHAPTER VIII

### ARABIA

Were it not for the marvelous career and lasting influence on a large portion of the human race of one man as a religious teacher and law giver, Arabia would be given but small space in this work. The people were allied on one side with the neighboring Asiatic population and classed as of Semitic stock, and on the other were intermixed with African blood of the Egyptian and Abyssinian stocks. Nevertheless the Arab is of a type quite as well marked as any of his neighbors and has been so for untold centuries. Modes of life and social systems appear to have been moulded by natural conditions. In Yemen, which has ever been rich and fruitful, the people have dwelt in settled communities, cultivated the soil and maintained a strong monarchical government, which is said to have lasted 2500 years before Mohammed, and to have extended its power over most of the south half of the peninsula. In the interior and desert portions, where settled agriculture is impossible, but precarious pasturage affords sustenance for flocks and herds, the wandering tent dwelling Bedouins moved from place to place with their live stock, recognizing no settled government beyond their tribal leaders. Though brought in contact with the ancient civilizations of Egypt, Babylonia and India through its traders, so far as known Arabia developed and preserved its own peculiar types. Our common system of expressing numbers by figures is perhaps the only Arabic invention with which we are familiar, but it may well be that this is not all for which we are indebted to them, so meager and imperfect are the records of past events.

Mohammed grew up under a tribal system which recognized no superior authority. Mecca, though a city of no great size, was occupied by clans having no common head.

The Koraish, by which general term the clans in and about Mecca were known, were traders whose caravans brought goods from Syria and Persia, which were sold at the fairs in Mecca. Knowledge of reading and writing was general among them.

Neither the Abyssinian Christians nor the Persian fire worshipers had been able to subjugate Mecca. Mohammed's parents died during his early youth and he grew up in extreme poverty first in his grandfather's, and then his uncle's, family. At twenty-five he entered the service of Khadija, a wealthy widow for whom he traveled to Palestine and Syria. Afterward he married her. He became familiar with the Hebrew scriptures and traditions and with the tenets of the Christians. To the many forms of idolatry which he found prevailing, not only among the followers of ancient Arabic faiths, but also among the Christians of his day, he conceived a most intense aversion. He was a profound believer in the unity of God. Mohammed laid no claim to divinity, not even to direct personal communion with God, but to having received the words of the Koran through the angel Gabriel. He posed merely as the apostle of God. He did not profess to proclaim a new religion, but merely to restore in its purity the ancient Jewish monotheism. He gave the great characters of the Bible recognition as prophets, and while he denied the divinity of Christ, his authority as a prophet and teacher is maintained. The Koran, though regarded by Mohammedans as a wonderful literary production, contains little to admire, when translated into English. Its repetition of the Bible stories, with variations of form, are tedious and uninteresting. The strength of his revelations seems to lie in the vigorous proclamation of the unity and power of God, and in the rewards offered to the true believers of a paradise suited to the sensual desires of the people to whom he spoke, and the hot torments of hell denounced as a punishment to those who refused to accept the Koran. The God he proclaimed was an intensely personal one, who took a keen and active interest in human affairs and rewarded and punished in ample measure. His doctrines tended directly to

the establishment of civil power under religious sanction, and Mohammed stands out in bold relief as the founder of a religious sect, who was at the same time the founder of an empire over subjects unaccustomed to submit to despotic rule. Although the Koran is the law for all Mohammedan countries and is accepted as based on divine authority, it is exceedingly meager in its rules of conduct, and is adapted to such conditions as the prophet was familiar with. The moral tone is superior to most of the Old Testament, but quite inferior to that of the New. As in the laws of Moses, the first and chief concern was to provide for the support and maintenance of the religion. From first to last the worship of the true and living God is enjoined, rewards are promised for the true believers and punishments denounced for the infidels.

The religious teachings and the code of laws put forth by Mohammed can best be studied in the Koran, in which is written the revelations which Mohammed claimed were sent down to him. The following extracts from the text will give a clearer idea of Mohammed's system than any summary of or comment on the Koran. The great influence Mohammed has exerted over a large part of the earth through so many centuries, in religion and as a law-giver, render his works of peculiar interest. The fanatical spirit which animated his followers is expressed in the following text: "When ye encounter the unbelievers strike off their heads until ye have made a great slaughter among them, and bind them in bonds; and either give them a free dismissal afterwards or exact a ransom until the war shall have laid down its arms."<sup>1</sup> "And as to those who fight in defense of God's true religion, God will not suffer their works to perish; he will guide them and dispose their hearts aright; and he will lead them into Paradise of which he hath told them, God hath preferred those who fight for the faith above those who are still by adding unto them a great reward."<sup>2</sup>

"The description of Paradise which is promised unto the pious, therein are rivers of incorruptible waters and rivers of

<sup>1</sup> Ch. 47. Sales' Koran.

<sup>2</sup> *Id.* Ch. 4, p. 65.

milk the taste whereof changeth not, and rivers of wine, pleasant unto those who drink, and rivers of clarified honey, and therein shall they have plenty of all kinds of fruits, and pardon from their Lord. Shall the men for whom these things are prepared be as he who must dwell for ever in hell fire and will have the boiling water given them to drink which shall burst their bowels." "Verily this present life is only a play and a vain amusement; but if ye believe and fear God He will give you your rewards. He doth not require of you your whole substance, if He should require the whole of you and earnestly press you, ye would become niggardly and it would raise your hatred against His apostles. Behold ye are those who are invited to expend part of your substance for the support of God's true religion; and there are some of you who are niggardly. But whosoever shall be niggardly shall be niggardly toward his own soul."<sup>8</sup>

"These are they who shall approach near unto God, they shall dwell in gardens of delight. . . . Reposing on couches adorned with gold and precious stones, sitting opposite to one another thereon. Youths which shall continue in their bloom forever shall go round about to attend them with goblets and beakers and a cup of flowing wine; their heads shall not ache by drinking the same neither shall their reason be disturbed; and with fruits of the sorts which they shall choose and the flesh of herds of the kinds which they shall desire, and there shall accompany them fair damsels having large black eyes resembling pearls hidden in their shells, as a reward for that which they shall have wrought. They shall not hear therein any vain discourse or any charge of sin but the only salutation Peace, Peace. And the companions of the right hand, . . . shall have their abode among the lote trees free from thorns and trees of mauz loaded regularly with their produce from top to bottom, under an extended shade near a flowing water and amidst fruits in abundance which shall not fail nor shall be forbidden to be gathered; and they shall repose themselves on lofty beds. Verily we have created the damsels

<sup>8</sup> *Id.* Ch. 4.

of paradise by a peculiar creation, and we have made them virgins, beloved by their husbands of equal age with them, for the delight of the companions of the right hand."<sup>4</sup>

"And they who believe not shall have garments of fire fitted unto them; boiling water shall be poured on their heads, their bowels shall be dissolved thereby also their skins shall be beaten with maces of iron."<sup>5</sup>

The duty of giving alms is frequently enjoined, and this generally meant making contributions for the support of the faith. Mohammed himself applied all his receipts to the use of his followers, with no desire to amass wealth, and alms with him really meant charitable contributions, except when used to propagate the word with the sword. The doctrines he taught were not above the comprehension of his followers, and the rewards promised were of the sort most pleasing to them. The punishments denounced against unbelievers were well calculated to terrify, and to these persuasions he added a vigorous policy for organization and extension of his temporal power. The command to pray was peremptory.

"Regularly perform thy prayer at the declension of the sun, at the first darkness of the night and the prayer of day break, for the prayer of day break is borne witness unto by the angels. And watch some part of the night in the same exercise as a work of super-erogation for thee; peradventure thy Lord will raise thee to an honorable station, and say O! Lord cause me to enter with a favorable entry, and cause me to come forth with a favorable coming forth, and grant me from thee an assisting power. And say truth is come and falsehood is vanished; for falsehood is of short continuance."<sup>6</sup>

The domestic customs prevailing in Arabia in the time of Mohammed were substantially like those of ancient Judea, Egypt and Persia and his teachings did not call for radical changes. "And give the orphans when they come of age their substance, and render them not in exchange bad for good, and devour not their substance by adding it to your substance, for this is a great sin. And if ye fear that ye

<sup>4</sup>*Id.* Ch. 56. <sup>5</sup>*Id.* Ch. 22. <sup>6</sup>*Id.* Ch. 17.



shall not act with equity towards orphans of the female sex, take in marriage of such other women as please you, two or three or four and not more. But if ye fear that ye cannot act equitably toward so many, marry one only or the slaves which ye shall have acquired. This will be easier that ye swerve not from righteousness. And give women their dowry freely; but if they voluntarily remit any part of it unto you, enjoy it with satisfaction and advantage. And give not unto those who are weak of understanding the substance which God hath appointed you to preserve for them, but maintain them thereout and clothe them and speak kindly unto them, and examine the orphans until they attain the age of marriage, but, if ye perceive they are able to manage their affairs well, deliver their substance unto them; and waste it not extravagantly or hastily, because they grow up. Let him that is rich abstain entirely from the orphans estate; and let him who is poor take thereof according to that which shall be reasonable. And when ye deliver their substance unto them call witnesses in their presence. . . . God hath thus commanded you concerning your children. A male shall have as much as the share of two females, but if they be females only and above two in number, they shall have two third parts of what the deceased shall leave, and if there be but one she shall have the half, and the parents of the deceased shall have each of them a sixth part of what he shall leave if he have a child, but if he have no child and his parents be his heirs then his mother shall have the third part. And if he have brethren then his mother shall have a sixth part after the legacies which he shall bequeath and his debts be paid. . . . Moreover ye may claim half of what your wives shall leave if they have no issue, but if they have issue, then ye shall have the fourth part of what they shall leave after the legacies which they shall bequeath and the debts be paid. They also shall have the fourth part of what ye shall leave in case ye have no issue, but if ye have issue, then they shall have the eighth part of what ye shall leave after the legacies which ye shall leave and the debts be paid. And if a man's or woman's substance be inherited by distant relation, and he

or she have a brother or sister each of them too shall have a sixth part of the estate. . . . If any of your women be guilty of whoredom produce four witnesses from among you against them, and if they bear witness against them imprison them in separate apartments until death release them or God affordeth them a way to escape. And if two of you commit the like wickedness punish them both, but if they repent and amend, let them both alone; for God is easy to be reconciled, and merciful. Verily repentance will be accepted with God, from those who do evil ignorantly and then repent speedily, unto them will God be turned for God is knowing and wise. But no repentance shall be accepted from those who do evil until the time when death presenteth itself unto one of them and he saith verily, I repent now; . . . O true believer it is not lawful for you to be heirs of women against their will, nor to hinder them from marrying others that ye may take away part of what ye have given them in dowry; unless they have been guilty of a manifest crime; but converse kindly with them. . . . If ye be desirous to exchange a wife for another wife and ye have already given one of them a talent, take not away anything therefrom. . . . Marry not women whom your fathers have had to wife; for this is uncleanness and an abomination and an evil way. Ye are forbidden to marry your mothers and your daughters and your sisters and your aunts, both on the fathers and on the mothers side, and your brothers daughters and your sisters daughters, and your mothers who have given you suck and your foster sisters and your wives mothers and your daughters in law which are under your tuition, born of your wives, . . . and the wives of your sons who proceed from your loins and ye are also forbidden to take to wife two sisters. Ye are also forbidden to take to wife free women who are married, except those women whom your right hand shall possess as slaves. . . . Whoso among you hath not means sufficient that he may marry free women who are believers, let him marry with such of your maid servants whom your right hands possess as are true believers. . . . Serve God and associate no creature with Him, and show kindness unto parents, and relatives

and orphans and the poor, and your neighbor who is kin to you, and also your neighbor who is a stranger, and your familiar companion and the traveller and the captives whom your right hand shall possess."<sup>7</sup>

Husbands were allowed to divorce their wives at will, the only restrictions being as to the time of putting them away, which could not be during pregnancy. "And speak unto the believing women that they restrain their eyes, and preserve their modesty and discover not their ornaments, except what necessarily appeareth thereof, and let them throw their veils over their bosoms and not show their ornaments unless to their husbands or their fathers or their husbands fathers or their sons or their husbands sons or their brothers or their brothers sons or their sisters sons or their women or the captives which their right hands possess, or unto such men as attend them and have no need of women or unto children who distinguish not the nakedness of women."

"O true believers enter not any houses besides your own houses until ye have asked leave and have saluted the family thereof . . . and if ye find no person in the houses, yet do not enter them until leave be granted you, and if it be said unto you return back, do ye return back."<sup>8</sup>

The criminal code is not voluminous. The Mosaic *lex talionis* is repeated with leave to remit on payments of alms. "It is not lawful for a believer to kill a believer unless it happen by mistake, and whoso killeth a believer by mistake the penalty shall be the freeing of a believer from slavery and a fine to be paid to the family of the deceased unless they remit it as alms; and if the slain person be of a people at enmity with you and be a true believer, the penalty shall be the freeing of a believer, and if he be of a people in confederacy with you, a fine to be paid to his family, and the freeing of a believer, and he who findeth not wherewith to do this shall fast two months consecutively, as a penance enjoined from God. . . . But whoso killeth a believer designedly his re-

<sup>7</sup> *Id.* Ch. 4, entitled Women.

<sup>8</sup> *Id.* Ch. 24, p. 265.

ward shall be hell, he shall remain there forever.”<sup>9</sup> “If a man or woman steal cut off his hand.”

“The whore and the whoremonger shall ye scourge with an hundred stripes. And let no compassion toward them prevent you from executing the judgment of God. . . . The whoremonger shall not marry any other than a harlot or an idolatress. And a harlot shall no man take in marriage except a whoremonger or an idolater; and this kind of marriage is forbidden the true believers. But as to those who accuse women of reputation of whoredom and produce not four witnesses of the fact, scourge them with fourscore stripes and receive not their testimony forever, for such are infamous prevaricators, excepting those who shall afterwards repent and amend, for unto such will God be gracious and merciful. They who shall accuse their wives of adultery and shall have no witnesses thereof besides themselves; the testimony which shall be required of one of them shall be that he swear four times by God that he speaketh the truth; and the fifth time that he imprecate the curse of God on him if he be a liar. And it shall avert the punishment from the wife, if she swear four times by God that he is a liar, and if the fifth time she imprecate the wrath of God on her if he speaketh the truth.”<sup>10</sup>

“Kill not your children for fear of being brought to want, we will provide for them and for you; verily the killing them is a great sin. Draw not near unto fornication for it is wickedness and an evil way. Neither slay the soul which God hath forbidden you to slay unless for a just cause” (apostasy, adultery or murder) “and whosoever shall be slain unjustly we have given his heir power to demand satisfaction, but let him not exceed the bounds of moderation in putting to death the murderer in too cruel a manner, or by revenging his friend’s blood on any other than the person who killed him, since he is assisted by this law, and meddle not with the substance of the orphan, unless it be to improve it until he attain his age of strength, and perform your covenant, for

<sup>9</sup> *Id.* Ch. 5, p. 78.

<sup>10</sup> *Id.* Ch. 24, entitled Light.

the performance of your covenant shall be inquired into hereafter. And give full measure where you measure aught, and weigh with a just balance. This will be better and more easy for determining every man's due. . . . Walk not proudly in the land for thou canst not cleave the earth neither shalt thou equal the mountains in stature. All this is evil and abominable in the sight of thy Lord."<sup>11</sup>

"O true believers let not men laugh other men to scorn who peradventure may be better than themselves; neither let women laugh other women to scorn who possibly may be better than themselves. Neither defame one another, nor call one another by opprobrious appellations. An ill name is to be charged with wickedness after having embraced the faith, and whoso repenteth not they will be the unjust doers. O true believers, carefully avoid entertaining a suspicion of another, for some suspicions are a crime. Inquire not too curiously into another man's failings, neither let the one of you speak ill of another in his absence."<sup>12</sup>

"Whatever things are given you they are the provisions of the present life; but the reward which is with God is better and more durable, for those who believe and put their trust in their Lord and who avoid heinous and filthy crimes and when they are angry forgive, and who hearken unto their Lord and are constant at prayer, and whose affairs are directed by consultation among themselves, and who give alms out of what we have bestowed on them, and who when an injury is done them, avenge themselves (and the retaliation of evil ought to be an evil proportionate thereto), but he who forgiveth and is reconciled unto his enemy shall receive his reward from God, for he loveth not the unjust doers."<sup>13</sup>

"Thy Lord hath commanded that ye worship none besides him, and that ye show kindness unto your parents, whether the one of them or both of them attain to old age with thee. Wherefore say not unto them, Fie on you; neither reproach them, but speak respectfully unto them, and submit to behave

<sup>11</sup> *Id.* Ch. 17, entitled The Night Journey.

<sup>12</sup> *Id.* Ch. 49, entitled The Inner Apartments.

<sup>13</sup> *Id.* Ch. 42, entitled Consultation.

humbly towards them out of tender affection and say O Lord have mercy on them both as they nursed me when I was little. . . . And give unto him who is of kin to you his due and also unto the poor and the traveller, and waste not your substance profusely for the profuse are brethren of the devils."<sup>14</sup>

"God will not punish you for an inconsiderate word in your oaths, but he will punish you for what ye solemnly swear with deliberation. And the expiation of such an oath shall be the feeding of ten poor men with such moderate food as ye feed your own families withal, or to clothe them, or to free the neck of a true believer from captivity, but he who shall not find wherewith to perform one of these three things shall fast three days. This is the expiation of your oaths when ye swear inadvertently. Therefore keep your oaths. Thus God declareth unto you his signs that ye may give thanks. O true believers surely wine and lots and images and divining arrows are an abomination of the work of Satan; therefore avoid them that ye may prosper. Satan seeketh to sow dissension and hatred among you by means of wine and lots and to divert you from remembering God and prayer, will ye not therefore abstain from them?"<sup>15</sup>

"Say I find not in that which hath been revealed unto me anything forbidden unto the eater that he eat it not, except it be that which dieth of itself or blood poured forth, or swine flesh for this is an abomination, or that which is profane, having been slain in the name of some other than of God. But whoso shall be compelled by necessity to eat of these things, not lusting nor wilfully transgressing, verily the Lord will be gracious unto him and merciful."<sup>16</sup>

"They who devour usury shall not arise from the dead but as he ariseth whom Satan hath infected by a touch, this shall happen to them because they say, Truly selling is but as usury and yet God hath permitted selling and forbidden usury. He therefore who, when there cometh unto him an admonition from his Lord, abstaineth from usury for the future, shall

<sup>14</sup> *Id.* Ch. 17.

<sup>15</sup> *Id.* Ch. 5.

<sup>16</sup> *Id.* Ch. 6.

have what is past forgiven him, and his affair belongeth unto God. But whoever returneth to usury, they shall be the companions of hell fire, they shall continue therein forever."<sup>17</sup>

"O true believers, when you bind yourselves one to the other in a debt for a certain time, write it down, and let a writer write between you according to justice, and let not the writer refuse writing, according to what God hath taught him, but let him write and let him who oweth the debt dictate, and let him fear God his Lord and not diminish aught thereof. But if he who oweth the debt be foolish or weak or be not able to dictate himself, let his agent dictate according to equity and call to witness two witnesses of your neighboring men; but if there be not two men, let there be a man and two women of those whom ye shall choose for witnesses, if one of these women should mistake the other will cause her to recollect, and the witnesses shall not refuse whensoever they shall be called. And disdain not to write it down, be it a large debt or be it a small one, until its time of payment; this will be more just in the sight of God, and more right for bearing witness and more easy that ye may not doubt. But if it be a present bargain which ye transact between yourselves, it shall be in you if ye write it not down. And take witnesses when ye sell one to the other, and let no harm be done to the writer nor to the witnesses."<sup>18</sup>

The true believers were commanded to wash before prayers and if where no water could be had, to rub faces and hands with fine clean sand.

"O true believers observe justice when ye bear witness before God, although it be against yourselves or your parents or relations, whether the party be rich or whether he be poor, for God is more worthy than them both; therefore follow not your own lust in bearing testimony so that ye swerve from justice. And whether ye wrest your evidence or decline giving it God is well acquainted with that which ye do."<sup>19</sup>

"God hath appointed the Caaba the holy house an establishment for mankind; and hath ordained the sacred month and

<sup>17</sup> *Id.* Ch. 2.

<sup>18</sup> *Id.* Ch. 2.

<sup>19</sup> *Id.* Ch. 4.

the offering and the ornaments hung thereon.”<sup>20</sup> “But they who shall disbelieve and obstruct the way of God and hinder men from visiting the holy temple of Mecca which we have appointed for a place of worship unto all men; the inhabitant thereof and the stranger have an equal right to visit it; and whosoever shall seek impiously to profane it we will cause him to taste a grievous torment. Call to mind when we gave the site of the Caaba for an abode unto Abraham, saying, Do not associate anything with me and cleanse my house from those who compass it and who stand up and who bow down to worship. And proclaim unto the people a solemn pilgrimage, let them come unto thee on foot and on every lean camel arriving from every distant road, that they may be witnesses of the advantages that accrue to them from visiting the holy place, and may commemorate the name of God on the appointed days in gratitude for the brute cattle he hath bestowed on them.”<sup>21</sup>

The foregoing passages cover substantially all of Mohammed’s law-giving. The substance of some of these commands is repeated in other places, but the balance of the Koran is filled with sermons and narratives taken from the Bible, and frequent and oft repeated denunciations of the infidels. This meager code did not suffice for the vast empire built up by his successors. To supplement it recourse was had to decisions made by Mohammed, to analogies, traditions and customs constituting the Sunna. Numberless commentators elucidated the text of the Koran, and the decisions of Mohammed were collected and published. Where all these failed to furnish a rule the early Caliphs exercised their own judgment, and, as must always happen everywhere in the absence of an established rule or precedent, the opinion of the judge in the particular case necessarily stands for law. Throughout all Mohammedan countries, however, the Koran was ever looked to for the spirit of the whole law, and its commands admitted of no change or modification by any authority whatever. A lengthy treatise on Mohammedan jurisprudence, that of Ibn

<sup>20</sup> *Id.* Ch. 5.

<sup>21</sup> *Id.* Ch. 23, entitled The True Believer.



Hanbal, has the following principal heads. Of Purification (ablution, purification of women, circumcision, etc.). Of Prayer, of Funerals, of Tithe and Almsgiving, of the legal Fasts, of the Pilgrimage to Mecca, of Commercial and other transactions, of Inheritance, of marriage and divorce, of the Faith, of Crimes and Misdemeanors, of Justice, of the Imamate or spiritual power, and of the Caliphate or temporal power.

An American lawyer would be more likely to think he had found a religious commentary than a law book, but with Mohammedans, law and gospel were one.

Mohammed's power was derived from the belief in his divine commission. The scope and limitations of his authority were fixed by revelations of the Koran, from time to time, as the exigencies of state required. In his life he extended his power over Arabia and sought submission from neighboring people, but died when preparing to invade Syria. His successors rapidly extended their power over Egypt, Syria and thence over the north of Africa and all Asia Minor. The first four Caliphs were chosen by the community at Medina. The revenues of the state consisted of the tithe for the poor, which every Moslem was required to pay, a fifth of the spoils of war,—the rest going to the warriors,—the poll tax and land tax on infidels. The Caliph administered the revenues according to his pleasure. The poll tax ranged from about two dollars on the poor to about eight dollars on the rich. The land tax was in the nature of a rent according to the character of the holding. In the early days pensions were paid to the faithful out of the public revenues. With the growth of the empire the necessities of administration caused its division into provinces, first ten, and on the removal of the capital from Damascus to Bagdad, twelve. Each province was governed by a prefect, who stood in the place of the Caliph. The central administration developed into various departments, each under the supervision of a chief. There was a ministry of Finance, Bureau of State property, Exchequer Office, Ministry of War, Court of Appeal, Bureau of freedmen and slaves of the Caliphs, Office of expenditure, Office of Posts,

Office of Correspondence, Office of the Imperial Seal and registration. All power was centered in the Caliph, who was the spiritual as well as the temporal head. The ministers of the various departments were responsible to him. So were the prefects who stood as his representatives in the provinces.

Justice was administered by Cadis appointed by the Caliph, his Vizier or the prefect. To be eligible to this appointment one must be a free male Moslem, of suitable age, sound mind, good morals and learned in the law. The Cadis had general civil and criminal jurisdiction and of guardianships and estates, and over mosques, schools and public buildings. To assist him the Cadi had Notaries, Secretaries and Deputies. From the decision of the Cadi an appeal might be taken to the Court of Appeal, which was presided over by the Caliph in person till the time of Mohtadi, after which a special judge appointed for that purpose presided. In the provinces there were Marshals who kept records of the birth and death of descendants of the family of the Prophet. The Imams officiated at the Mosques.

The practical application of the Koran in the decision of causes by the Cadis and the religious sentiment of the believers combined in calling out innumerable commentaries, seeking to elucidate and make plain whatever was obscure. Judges with a fixed guide for their decisions were a marked improvement over despotism, notwithstanding the meager rules afforded by the Koran. Under the Caliphs a new and better civilization than any which had preceded it developed, and the seats of learning and progress in literature, art and science were within the Moslem world. As the lights grew dim in the crumbling empire of Rome and Constantinople they burned more brightly at Damascus and Bagdad, illuminating the followers of Islam from India to Andalusia. Though the teachings of Mohammed were not so pure and exalted as those of Christ, they were coupled with more practical means for their observance, and on Asiatic and African soil they manifested superior adaptation. In Europe they never took firm root, save among the Moors in Spain and the Turks in the east.

Though at this day it is estimated that near 175,000,000 people are Mohammedans, the empire of the Caliphs is in scattered fragments. The Koran sanctions slavery and polygamy, and, while it forbids wine and gaming in this world, it promises a sensual idlers' heaven. Its ideals are neither pure nor exalted, and its standard of justice is partial and deficient. While apparently of great use in its time, like all other rigid systems enforced by a religious sanction, it perpetuates its errors and vices, and in the lapse of centuries these seem to overshadow the good and render the whole an obstacle to be removed to make way for something better. But so well is the faith with its rewards and punishment adapted to certain types of men, that neither Christianity nor Buddhism has succeeded in transplanting it.

## CHAPTER IX

### INDIA

Within the geographical limits of what we call India there are, and in the earliest times of which we have any accounts were, so many people, differing in race, language and social condition from each other, that generalizations become exceedingly difficult and a connected historical statement of the development of their civilization quite impossible. No single race has at any known date occupied the whole territory. No one language has been spoken by all the people. At this day the ethnologist finds there an ample field for the study of the diverse types of men. Connected histories by native writers are almost wholly wanting. The material from which the student must proceed to construct an account of the past is fragmentary. The earliest accounts come through the sacred writings of the Aryan invaders, who entered the country from the northwest. The date of their advent into the Punjab is variously estimated by scholars on data which leave a very wide margin for difference of inference, with no means of definitely settling the point. It seems safe to say that it was more than 1000 B.C. and may have been thousands of years earlier. These invaders found the country already peopled by numerous tribes, some of whom used iron implements and were considerably advanced above the savage state. Of the people occupying those parts of the country remote from the invaders we have no accounts reaching back to so early a time.

From the Vedic hymns are gathered the leading facts relating to the movement of the Indian branch of the great Aryan family from the common home in the mountain region from which the Oxus and Jaxartes flowed. What causes have produced the Brahmin type in India and the Persian, Median and European in the west it is not our purpose to inquire, but

it may be noticed that the race is generally the dominant one wherever found. The earliest songs disclose the clans in Cabul north of Khyber Pass, the later ones show them to have reached the Ganges. They were a very religious people and placed great reliance on the aid of their gods. The *R̥ich-Véda* shows the Aryans dwelling along the banks of the Indus, divided into tribes, sometimes warring with each other, sometimes united against the dark skinned aborigines. Each father of a family was also its priest. The chief acted as priest of the tribe, but at the great festivals chose some one specially learned in the rites to conduct the sacrifices. Chiefs were elected. Husband and wife together were rulers of the house, and the marriage relation was held sacred. Caste and the burning of widows were unknown. Before entering India through the Khyber Pass and while still in the mountainous region near Cabul, the Aryans had already discovered or learned many of the arts of civilization. They had blacksmiths, coppersmiths, goldsmiths, carpenters and barbers. They fought in chariots and with horses, they reared cattle, tilled the soil, spun and wove. When and where the art of writing was learned by them is a point on which scholars differ widely. While it is agreed on all hands that the hymns of the *R̥ig Véda* are of very ancient composition, definite dates have not been fixed, and it is claimed that they were not reduced to writing for many centuries after their original composition.

This strong, vigorous and highly religious race of people descended into the valley of the Indus, which they found already occupied by inferior people. Most of the aboriginal tribes found by the Aryans were of a negroid or mongolian type, not more advanced in culture than the American Indians at the time of the discovery of the western continent. There were others mentioned in Sanskrit literature as wealthy and possessed of castles and forts. They adorned their dead with raiment and ornaments of bronze, copper and gold. There are ample evidences of the existence in early times of rude tribes, who used stone implements, but just at what stage of development all the native people had arrived at the time

of the advent of the Aryans, it is impossible to state. That the invaders were superior as warriors, as well as in culture, is evident from the extension of their possessions, which spread from the valley of the Indus to that of the Ganges and ultimately extended over most of the peninsula. The conquests of the Aryans however, were not merely the extension of military power and governmental control over the native population, but the encroachments of a superior race, which either drove out or subjugated the inferior. Race and religious superiority were asserted rather than mere sovereignty, and the invaders came to make the conquered country their home.

The non-Aryan races are said to belong to three principal stocks, the Tibeto-Burman, the Kolarian and Dravidian. The language of the Tibeto-Burman indicates Mongolian and Chinese origin, and it is inferred that they crossed into the country they now inhabit along the skirts of the Himalayas from Central Asia. The Kolarians are also supposed to have entered India from the north and are now found mainly in the north and along the northern edge of the southern tableland. At the present time they appear as scattered tribes, whose common origin is proved by similarity of language and appearance rather than any social connection or tradition of common origin. The Dravidians form a compact mass in southern India, and the dialects classed as Dravidian are spoken by nearly 50,000,000 people. Aside from these principal stocks, the presence of Africans and Arabs in India in very early times is well established, and their blood has been preserved and mixed with the other stocks to a considerable degree. At all periods in its history India seems to have attracted to it people from the north and west, not only for trade, but also for permanent settlement and conquest.

Chaldeans, Assyrians and Egyptians as well as Chinese have known of and traded with the people of India from very early times, yet very little can be learned of the early conditions of the people from accounts derived through these sources. It is impossible to trace the governmental and social state of India through the historical period and ignore

the rise and fall of religion. Nowhere else has the effect of religious teaching on social life been greater or more enduring.

The proud Aryan invaders, whose deeds are related in the Vedic verses, asserted and maintained, not only their own race superiority over the people they subdued, but also the superiority of their gods over the weaker ones of the aborigines. In the early period of the Aryan invasion, when the art of writing was unknown, the battle hymns and sacrificial ceremonies were passed down by oral instruction from father to son. This led to the growth of a priestly order, specially versed in all that pertained to the sacred rituals. Great faith was put in the efficiency of battle hymns that had been chanted and prayers that had been offered before successful battles. By degrees the number of prayers and hymns increased and the priestly order multiplied, till the great ceremonies required superior priests to direct and, under them, those who prepared the sacrificial ground, dressed the altars, slew the victims and poured the libations, those who chanted the Vedic hymns and those who recited other parts of the service. In the course of time a priestly order was thus developed. As the conquests of the invaders were extended by continual wars against the primitive people, the leaders of the army, who were rewarded with such possessions as enabled them to devote all their time to the service of the king, became the military class. The common people who settled down and tilled the soil became the *Vaisyas*, and beneath them were the conquered people who were forced to serve the invaders. In this manner the four fundamental castes, which, with their numerous divisions, subdivisions and new classifications, have given to Indian society its peculiar structure, were founded. The Brahmans have always asserted their superiority over all, but this has not always been conceded by the military caste, and the relative power and influence of these leading castes have fluctuated with the varying conditions due to the rise and fall of dynasties and the strength or weakness of princes and other causes.

The Vaisyas were the lowest caste of the Aryan stock, yet

were ranked as belonging to the "twice born" and were all allowed to be present at the great national sacrifices. The lowest were the once born Súdras, the Dasas of the Véda, whose lives were spared by the conquerors in order that they might live as a servile class. These were not allowed to attend the great sacrifices and feasts. It was their lot to perform the hardest and meanest labor, and from their low estate they could never rise. The system of castes did not fully develop until after the Aryans were well settled along the Ganges. It did not obtain in the early settlements west of the Indus. In the Middle Land, from Delhi to Benares, the Brahmans became a compact body which assumed to dictate to all classes in all matters relating to religion, philosophy and law. They denounced all Aryans who did not submit to their pretensions as lapsed and outcast tribes. The religious thought of the people found its expression in the Védas, which were ultimately compiled and reduced to writing. The Brahmans however were not content with the enforcement of religious rites and the preservation of the ancient faith. They sought to secure their own position and the social system which had been developed by codes of laws.

The earliest of these are the Dharma Sastras, which exhibit the state of the Hindu law at an early date, not fixed with any degree of certainty. They do not purport to be new enactments, but simply compilations of existing law. They recognize and enforce the division into castes in the order stated. Later than this came the great code of Manu which the Brahmans ascribe to the first Aryan man thirty millions of years ago. This was a compilation of the laws which had been established in that portion of India where the Brahmanical order exercised the greatest influence. This so-called code has wielded a more powerful influence and over a far wider field than any native dynasty ever established in India. So strong a hold did the system which it expressed gain on the people of India that its leading tenets have maintained their authority through all the mutations of race and empire, even to the present day. Later than this came a second great code that of Yajnavalka, compiled after the establishment of Bud-



dhism. It is a reiteration of the laws of Manu with some additions relating to legal forms and other matters.

These codes found their sanction in the Védas, which had attained the authority of inspired writings, and the rules declared for the government of all classes of people were mainly extracted from the Vedic *Sanhitas*. While the purpose to exalt the Brahman caste is evident, it was not the gross superiority which comes merely with the possession of wealth and political power, but a far better and more enduring superiority was sought and in fact attained. The Brahmans were made the custodians not merely of the religious ceremonials but of learning as well. Purity of morals and of blood were enjoined, and the leading idea at all times seems to have been to maintain a genuine intellectual and physical superiority over the native races and also over the inferior Aryan castes. The three original Aryan castes Brahmans, Cshattriyas and Vaisyas all observed the same domestic rites at birth, first feeding of rice, investure with the sacred thread, marriage, funerals, etc. The most important of these observances was the *upanayana* or conducting the boy to his teacher. Connected with this was the ceremony of investing with the sacred cord, which was worn over the left shoulder and under the right arm, varying in material according to the class of the wearer. This was the preliminary to his initiation into the study of the Véda, the management of the sacred fire, the knowledge of the rites of purification, and the invocation to the sun, which he must repeat morning and evening.

The steps by which the principles of Brahmanical law were extended and enforced, throughout not only Hindostan but farther India as well, cannot be traced historically, but certain it is that the code of Manu, modified by and adapted to local conditions and customs, forms the basis of the social organization of the many races of India. While the system of castes is often spoken of as the most rigid and inflexible institution ever established, it seems to have been so moulded as to adapt itself to all the varying conditions of that most varied aggregation of people, and in matters of belief the Indian pantheon appears at one time or another to have had

a place for every god and religious ceremonial, a form suited to the prejudice of every clan.

- The Brahmanical codes were never dependent for their enforcement on any particular ruler or ordinary governmental agency. Their principles were inculcated into all classes by the teachers, who acted also as judges in controversies arising among the people.

The first powerful attack on the influence of the Brahmins resulted from the teachings of Gautama in the sixth century B.C. He was the son of the chief of the Sakyas, an Aryan clan dwelling about one hundred miles north from Benares, and was himself of the Cshatriya caste. Having abandoned all the privileges of his station and formulated his system of religion, he proceeded to teach it as a mendicant, begging his subsistence wherever he went. He sought to establish no new government or organization of society, but to teach men the way to permanent peace and happiness, to rest in *Nirvana*. He taught the Brahman doctrine of the transmigration of the soul, and that existence must be endured till the soul became pure and free from all evil passions and desires. The purity and loftiness of his doctrines are fairly expressed in the following extract from the Buddhist Scriptures. Answering the question as to what he considered the greatest blessing he said, "1. To serve wise men and not fools, to give honor to whom honor is due, this is the greatest blessing. 2. To dwell in a pleasant land, to have done good deeds in a former birth, to have right desires for one's self, this is the greatest blessing. 3. Much insight and much education, a complete training and pleasant speech, this is the greatest blessing. 4. To succor father and mother, to cherish wife and child, to follow a peaceful calling, this is the greatest blessing. 5. To give alms and live righteously, to help one's relatives and do blameless deeds, this is the greatest blessing. 6. To cease and abstain from sin, to eschew strong drink, not to be weary in well doing, this is the greatest blessing. 7. Reverence and lowliness, contentment and gratitude, the regular hearing of the law, this is the greatest blessing. 8. To be long suffering and meek, to associate with members of the

*Sangha*, religious talk at due seasons, this is the greatest blessing. 9. Temperance and chastity, a conviction of the four great truths, the hope of *Nirvana*, this is the greatest blessing. 10. A mind unshaken by the things of the world, without anguish or passion and secure, this is the greatest blessing. 11. They that act like this are invincible on every side, on every side they walk in safety and theirs is the greatest blessing."

The teachings of Gautama, though not directly attacking the institution of caste, left no place for it. *Nirvana* was open to the *Súdra* as well as the *Bráhmén*. The same course of conduct was enjoined on all and the vanity of all earthly possessions and power was a leading theme in his teachings. He organized a society called the *Sangha*, whose members forsook worldly callings and taught his doctrines. The Buddhist monasteries, afterward so numerous wherever his religion became established, are the successors of this society, though the practices and doctrines of the early time have been much corrupted. The new religion was spreading among the tribes of Northern India at the time of Alexander's invasion 327 B.C. but had not become general.

From the Greek historians we gain the first historical accounts of India as seen through the eyes of Europeans. The impression was of a country of vast wealth and numerous people. The most potent monarch Alexander encountered was Porus, whose dominions appear to have been in the Eastern part of the Punjab. His force is stated at 30,000 infantry, 4,000 cavalry, 200 elephants and 300 war chariots, though the combined forces of the *Oxydracae* and *Malli* which Alexander afterward encountered are said to have amounted to 90,000. Alexander's conquests extended only into the Punjab and did not prove permanent. Following the Greek invasion Chandra Gupta founded his empire in what is now the province of Behar with his capital at Patna. Seleucus, who succeeded on the death of Alexandria 323 B.C. to the Empire of the East, was unable to maintain his authority in India and finally concluded an alliance with Chandra Gupta, giving him his daughter in marriage and sending Megasthenes

as an ambassador to reside at his court. Megasthenes wrote a full account of the condition of society in India at that time, and his account of the system of castes corresponds in the main with that obtained later through Indian sources. He divides the people into seven classes, viz. philosophers, husbandmen, shepherds, artisans, soldiers, inspectors and counsellors of the king.

He commented favorably on the absence of slavery, the chastity of the women and the courage of the men. Each village was a little republic, owning the land by a common title, though tilling in separate tracts. The people were truthful, sober and industrious, living peaceably in their communities. India he says was then divided into 118 kingdoms. General descriptions of a country so vast as India must then have been very imperfect. Though the disposition of the people was peaceable, wars between the petty kingdoms occurred, resulting in the rise and fall of rulers and the aggrandizement of one at the expense of another.

The kingdom founded by Chandra Gupta was extended under his grandson Asoka over the whole of Northern India. After a bloody early career, in which among the deeds charged to him is that of ordering the slaughter of all his brothers but one, in the year 257 B.C. he became converted to the Buddhist faith. He was as vigorous in inculcating the new religion as he had been in war, and Buddhist monasteries multiplied all over his dominions. He sent ambassadors to Egypt, Cyrene, Syria and Macedonia. At his death, after a long and prosperous reign, his empire fell to pieces. One of the prominent features of Asoka's reign was the great council of Buddhists, held at his call 244 B.C., at which the canons of the faith were discussed and promulgated in what is termed by northern Buddhists the Lesser Vehicle, in contradistinction to the Greater Vehicle, a more voluminous compilation, engrafting many new practices and articles of faith, which was settled by the fourth and last great council held in the reign of Kanishka, who ruled northwestern India, as well as a considerable district lying to the north and west of it. The Greater Vehicle became the law for the Thibetan and Chinese followers of Buddha.

About 126 B.C. the Tartars are said to have driven the Greeks from Bactria and their settlements from the Punjab. The empire of Kanishka is styled Scythic, and there seems to have been at that period an extensive movement of Scythians into India. They did not meet with a peaceful reception, and the princes and warriors who successfully resisted their encroachments are celebrated by Hindu writers. They appear however to have maintained a part of their conquests and the modern Jats and some tribes of Rajputs are said to be of Scythic stock.

Later came invasions of Huns. To trace the varying fortunes of the natives and their invading enemies is a great and exceedingly difficult task, not contemplated in this work. Recurring periods of bloodshed and the desolations of war interrupted the calm devotions of the faithful followers of the teacher of peace and good works. Notwithstanding the inculcation of the injunction not to kill, the people of India stood their ground and on the whole seem to have had rather the better of the struggle with the ruder people from the northwest. Aryan and non-Aryan people alike were engaged in opposing the invaders, as well as in warring with each other from time to time. In about 630 a Chinese pilgrim found both the northern and southern sects of Buddhists in India and listened to their debates at various places.

Brahmanism continued in spite of the growth of the new religion. It was doubtless materially aided by the frequently recurring wars, when fierce war gods, who were given places in the pantheon, were deemed more serviceable than the passive virtues of Buddha. About the seventh and eighth centuries there seems to have been a revival of Brahmanism, and, at the time of the Mohammedan invasion, Buddhism had nearly disappeared from India.

The first Mohammedan invasion was in 664, only thirty-two years after the death of the Prophet, but it was without permanent results. In 711 Sind was invaded and subjected to the rule of Walid I, Caliph of Damascus. In 750 the Mohammedans were driven out. No further invasion is mentioned until 977, when the Punjab was made tributary to Sabuktigin

Sultan of Ghazni. His son Mahmud invaded India repeatedly with his armies and fought successfully great battles, as the result of which his authority was extended as far as the Ganges. Khusru, a son of the last of the Ghazni dynasty, having been driven out by the Afghans of Ghor, founded at Lahore a short-lived Mohammedan dynasty, but the Afghan Mussulman waged successful war against his son and took him prisoner. Under Muhammed Ghori the new empire was extended by successive conquests over the entire northern plain as far as the Brahmaputra. At the death of Muhammed the viceroy, through whom he had governed India, proclaimed himself sultan at Delhi. In 1294 Allah-ud-din Khelji raised himself to the throne of Delhi. He extended his dominions to the south and his armies penetrated to the extreme south of the Peninsula. The descendants of Allah-ud-din occupied the throne but five years when in 1321 Gheyas-ud-din Tuglak, said to have been a Turk, established a dynasty which lasted till the invasion of Timur, seventy years later.

The period of the rule of this dynasty was one of magnificence at court, of war and tyranny. Revolts against the sultan in various quarters prepared the way for Timur, who invaded India in 1398 and gained most unenviable fame for his cruel slaughter and enslavement of the people. The city of Delhi and many other towns were sacked, and the people of all ages and sexes indiscriminately slaughtered. Great numbers of captives were taken back to his capital at Samarkand as slaves. He established no permanent government and his invasion was followed by a period of small states without any great authority.

In 1525 Baber, the fifth in descent from Timur, by invitation of the governor of the Punjab, invaded India and founded the great Mughal empire, which however was not generally recognized during his life, but his actual authority extended over only a limited and not clearly defined territory. His son Humayun was driven out of India by Sher Shah, a native of Bengal, who established an extensive though brief authority over Hindostan. Akbar, the son of Humayun, appears the real founder of the Mughal empire, which lasted

till finally overthrown by the British. Humayun died in 1556 when Akbar was fourteen years old.

Under the guardianship of Bairam Kahn he first established his authority in the Punjab and on the upper Ganges about Delhi and Agra. From this basis he extended his dominion over the greater part of India. He was not only a great conqueror but a noted civil governor. He reformed the system of taxation in such manner as to make the burden fall more equitably than before and at the same time produce ample revenue. He established many public schools, was tolerant to all religions, and it is said that though raised a Mohammedan he had no fixed religious belief. In his military system he employed native Rajputs on equal terms with his Mughals. His favorite wife was a Rajput princess. He was superior to all his predecessors in his understanding of the character and prejudices of the people over whom he ruled, and he successfully adapted his system to the vast mixed population of his dominions. Under his grandson Shah Jahan the empire reached its period of greatest magnificence of which many noted monuments remain.

The Taj Mahal at Agra, erected as the mausoleum of his favorite wife, is regarded as a model of beauty and purity in architecture never surpassed. Aurangzeb succeeded his father, Shah Jahan, in 1658 and before his death extended the empire over the Deccan and to the extreme south of the peninsula. While his territory was extended, the fibre of his government seems to have weakened, and after his death the empire fell in pieces never again to be reconstructed. Petty sovereigns divided the dominion and exercised authority over its various districts. In 1500 the first permanent lodgement of Europeans in Hindostan was effected by the Portuguese on the Malabar coast. For a century thereafter they enjoyed a monopoly of oriental trade. The Dutch were the first to break this monopoly and were soon followed by the English and French, whose struggle for supremacy will not now be considered.

While it seems altogether natural and proper to speak of India as a single country and to consider its history as an

entirety, the foregoing brief summary of some leading events omits mention of princes without number, who from time to time ruled over more or less of the country. From the earliest times the wealth of India has been proverbial, and it has attracted alike the traders and the armed invaders. The latter have been of two classes, those who came merely to add territory to a foreign empire, and those who came to gain settlements in the country. The Aryan movement is the earliest of which records have been preserved, but they found the country already peopled. When and whence those early people came upon the scene cannot be told.

While the original Aryan invaders do not appear to have ever established a government over the whole country or even over the greater portion of it, they did impose their religion, their laws and customs in nearly all parts of the peninsula. Some of the early tribes, however, never accepted their teachings and their religion has been corrupted with local superstitions to such an extent in many places as hardly to be recognizable. Nor are their laws governing marriage, inheritance and property rights in general uniformly followed. On the contrary local superstitions and customs have produced infinite variety of worship, ceremony and local law.

The practice of burning widows with the dead bodies of their husbands, called suttee, is chargeable to the Brahmans and was followed by people of the highest classes. It was esteemed a virtuous act for the widow to follow her husband, and the meaning of the word suttee or *sati* is a virtuous wife. Though this custom is an ancient one it is not sanctioned by the Védas or the code of Manu. It was practiced by other ancient people, notably the Scyths. Some of the Kandh clans practiced human sacrifice in most cruel and revolting manner until very recent times.

The institution of caste has shown the most marked staying qualities, and the original simple divisions of the Aryan invaders into four castes has been followed by more than a thousand different divisions, partaking of the nature if not strictly designated as castes. Very few of the people of all India are wholly exempt from caste distinctions. Some of



the wild hill tribes are said to have no castes, and, of course, Europeans and other new comers into the country cannot be said to have castes. They are nevertheless classed by themselves by the Hindus, and the system of classification is so deeply rooted that, as to the great mass of the people of India, all kinds of people are assigned to some class, and the observance of their own castes by the Hindus operates to a great extent in fixing a caste for all newcomers. The main exception to the prevalence of strict castes is among the Mohammedian population. As they look to the Koran for their law and as Mohammed made no distinction of race, color or condition among his followers, the true believer has no basis for caste distinctions. There are, however, especially among the Mongolian and negroid races, many nominal Mohammedans, who adopt many Hindu customs and observe caste restrictions. Of the whole population nearly three-fourths are classed as Hindus in religion, and nearly three-fourths of the remainder as Mohammedans. The natural tendency for those engaged in a particular profession or business to associate and combine, because of similar tastes and common interests, has supplemented the policy of the early Aryans, which seems to have aimed mainly at the maintenance of the supremacy of the conquering race and of the rank of the Brahmanical order.

Neither in religion nor in law has a uniform system ever prevailed over the whole country. Different modifications of the pantheon of gods have been made to meet the demands of different tribes, till under the general head of Hindus are included all grades and shades of faith and ceremony, from those of the high minded Brahman, who seeks by rigid fasting, meditation and prayer to divest his soul of all evil passions and worldly desires, in order that he may find rest with the divine essence, to the worshippers of the destroyer, who seek by human sacrifices to avert the wrath of wicked gods. The leading features of the caste system seem to be adapted to all races and conditions. Not only do those belonging to the higher castes insist on its rigid maintenance, but those belonging to the inferior ones find that it accords with their wishes and inclinations. The old saying that "birds of a

feather flock together" expresses the natural tendency of those occupying similar social position or engaged in similar pursuits to associate, and in India this natural tendency has been crystallized. The leading advantages of the system would seem to be that it tends to make the low born content with their lot, and that each son is brought up to follow the calling of his father, by which means each profession and calling will be filled by men better educated and qualified than where there is a constant shifting of members of the family from one calling to another. The reality of even this advantage may be debatable. On the other hand to western men the tyranny of the system seems intolerable. Its rigidity prevents spontaneity and progressiveness, and removes all hope from the low born of rising out of his class. The evolution of the race seems to require selection from the whole mass of population, if a maximum of vigor is to be maintained among the leaders. Dynasties of rulers invariably degenerate and either die out or are cast out because of their weakness or vice. Though the village system is regarded by many writers on law and government as primitive and an embryonic government, it prevailed over most of India till the advent of the British, and is still maintained throughout a great part of the country. The details of the system vary, its leading characteristics are a well defined district of land occupied by a community, whose local affairs are regulated by officers usually chosen by the people but sometimes hereditary. In a large percentage of the villages the title to the land was held in common and taxes to the sovereign were paid by the community as a unit from the proceeds of the harvest. The village authorities assigned the land for tillage to the various citizens, and adjudged all controversies between them. The tillage was usually separate, even where the title was in common. In other villages the land was held in severalty, but in dealings with the sovereign power and in the payment of taxes it was regarded as the unit. This system is not patriarchal, though it possibly may have been so in its earliest form.

The kings and rulers seem to have regarded the people as

not entitled to much in return for the taxes paid and services rendered the sovereign. Aside from defending them against outside foes, the government never attempted much in their behalf. In public works there is nothing worthy of mention but palaces, temples and the great roads constructed by the Mughals. Though the people of the higher castes, the twice born, have always enjoyed some advantages of education, it has been given them by the Brahman caste and private teachers, not by the king. The fertility of the soil and the patient industry of the people have led to most excessive and burdensome taxation, to great pomp and luxury in the palaces and to extreme distress among the poor when crops have failed, as they occasionally do. One-third of the gross yield of the land seems to have been regarded as about the right proportion to take, and under the Mughals this was exacted from the villagers and is at this day by the British in many parts from the best lands.

Nowhere else on the face of the earth can be found so dense a population, covering such a vast extent of country, living under an ancient system of laws and yet without a general government, as existed in India at the advent of the British. China during most of its history has had a well organized governmental system, whose authority has been recognized over most or all of its territory. Its people also have been mainly of one race. India exhibits the peculiar spectacle of a vast empire, with endless diversity of races, speaking many different languages, yet recognizing and obeying in its main precepts a code of laws promulgated in the dim past by unknown persons, a code which was never promulgated by a sovereign power having dominion over the ancestors of the people or the land in which they dwell. It owes its authority mainly to the teachings of the Brahmins and to its adoption as the rule of decision by the judges and rulers in past ages, as it has been adopted and followed by the British in recent times. Some analogies to this may be found in the adoption of the principles of the Roman civil law by countries never subject to the empire, and in the adoption of the Koran as the law of all Mohammedans, but in the one case the system was

gradually developed under a strong government ruling a vast empire, and in the other the authority of the law is consequent on religious faith.

The area of the country we have been considering is nearly a million and a half square miles and it now has a population of nearly or quite 250,000,000. Among this vast mass are remnants of what are believed to be the earliest inhabitants of the country, whose lowest type is exhibited by the savage Andaman islanders, wholly devoid of all civilization. Superior to these yet still very low in the scale of humanity are the monkey faced tribes of the south, the Bihls and other predatory hill tribes and the almost numberless fragmentary remnants of races that in past ages may have held extensive districts. Above these are the industrious descendants of Mongolian stocks, the Dravidians, the Indo Chinese, the Afghans, Mughals, Arabs, Persians and the proud descendants of that race which composed the Védas and promulgated the codes. This vast empire is now subject to the government of a little island on the most remote border of the hemisphere. The government of the British will be considered in another place.

Though Great Britain has long maintained its sovereignty over India, it has never attempted to impose its system of laws on the people. The ancient stratification of society still persists and the code of Manu is still the basis of the law administered in the courts. This code is so remarkable in its precepts and has so profoundly influenced the vast population of India for thousands of years that it is well worthy the careful study of every investigator in the field of human laws. A summary of its provisions with copious extracts from the more striking parts will be found in the Appendix.

The student who seeks a comprehensive knowledge of the rules actually applied throughout all that vast country, extending from the valley of the Indus to Siam, encounters a most perplexing multiplicity of details. The Code of Manu is recognized as the foundation of the laws of Hindostan and also of Burmah, Siam and Ceylon, yet there is wide divergence in the practical application of it in different places.

As a result of the teachings of Gautama the Code of Manu, though still recognized as the basis of the laws, was greatly modified in those districts where the Buddhist faith prevailed. The Burmese code, called the *Damathat*, gives the primary classification of men as Chiefs, Brahmans, wealthy and poor, and elsewhere the mercantile class is mentioned as a distinct order. In the twenty-third section of the fourth volume of the Burmese code, the Royal family is mentioned as the highest class, and other relations of the King, the great Chiefs, ministers or lords, the lesser lords, lords of lower degree, wealthy class Brahmans, *thoogyees* of villages, governors, land measurers, and those whom the King had advanced, as constituting the next class. The second class and the mercantile are each divided into the great, middle and lesser. The right of the King to raise from the lower to the higher orders is asserted and the rigid rules of inherited castes do not obtain. Though the system evolved by the early Aryan invaders spread over all India as the basis of all the written laws, in the east it has been modified by the influence of Buddhism and the Chinese and in the west by Mohammedanism. Owing to the lack of a single governing force having authority over the whole country no version of the code has at any time found full recognition, even throughout the whole of the Indian peninsula, and the actual administration of the law has at all times been more or less dependent on the will of despotic rulers, having authority over more or less of the country, according to circumstances.

The Burmese code exhibits marked differences in the theory of the distribution of inheritable property. The rules given are very loose and indefinite. On the death of the father the eldest son is given "the riding horse, elephant goblet, betel apparatus, sword, clothes and ornaments, and of the slaves, the betel carrier and two water carriers; and let the mother have her clothes and ornaments, goblet, betel apparatus, and all female slaves. Let the residue be divided into four parts, of which let the eldest son have one and the mother and younger children have three. This is the law when the mother does not marry again; if the mother uses the property for neces-

sary subsistence let her have the right to do so. If the mother takes another husband (a thing prohibited by the code of Manu), the portion of the eldest son, animate and inanimate, shall be noted before witnesses and taken care of; and if he be too young to separate from his parents, and the mother dies, let him have all that has been apportioned to him above and, having divided the portion of the mother into four parts, let the stepfather have one part, and the eldest son three. The original property and debts of the step-father shall not be divided but of the mother's original debts let the step-father pay one-fourth; having valued the house let the step-father have one-fourth." Laws of Menoo, Vol. 10, sec. 5.

On the death of the mother "let the eldest son have one male slave, one pair of good buffaloes, one pair of oxen, one foreign and one Burman goat, with one pay of arable land; with the exception of these things let the father and younger children have all the property animate and inanimate."

In case the father is not possessed of the specific property named, compensation in money is provided for and, if not able to pay, less is to be given according to his means.

On the death of the father the eldest son only is assigned his share. The younger sons must wait till the death of the mother.

When both father and mother die leaving only daughters, the eldest takes all her mothers clothes and ornaments, and all other property is divided into twenty parts, of which the eldest takes one. The balance is then again divided into twenty parts, and the next daughter takes one, and after a third division for a third daughter the balance is divided equally among all.

Where father and mother both die leaving sons only, the eldest takes the clothes and ornaments of the father and the remaining property is divided into tenths of which he takes one. The remainder is divided into tenths of which the second son takes one; the balance is again divided into tenths of which each of the others takes a share, and the remainder is then divided equally among all.

In case there are both sons and daughters the eldest son

takes the father's clothes and ornaments, the eldest daughter the mother's, and the residue is then divided into fifteenths and distributed to each according to age on the above principle till the seventh distribution has been made, and the balance is then divided equally.

After these regulations follow others fixing the rights of step-fathers and step-mothers, and children of the half-blood, of collateral relation, and providing for cases which would seem likely to be rare and exceptional. The tenth volume of the Burmese code, which relates to the law of inheritance, contains eighty-one paragraphs and covers fifty-six pages. Besides these there are various provisions on the same subject in other parts of the code. The right of a woman to own property is generally recognized throughout India, but with varying local regulations.

A compilation of Hindu laws translated from the Sanskrit into Persian and from the Persian into English called the Gentoo Code contains provisions relating to property rights in quite strong contrast with western laws.

"If a man owes money to several creditors, he shall first discharge that debt which was first contracted and so in order." Sec. 5, page 25.

This would seem more just than the law which favors the hard creditors who first attaches his debtor's property.

Gifts made under the impulse of violent fear, anger, lust, grief, by mistake, in jest, by a child or an incompetent person, or when intoxicated may be recovered back. In times of calamity a woman may borrow for necessities and bind her husband to pay the debt, and the husband may at such a time give away his wife with her consent. The father may also sell or give away his son with his consent.

In cases of partnership capital furnished by one is regarded as equivalent to the labor of another and profits are divided according to agreement where one is made, but, in the absence of an express contract, according to the amount of capital contributed and services rendered.

When robbers go to a distant country and return with their booty this code provides for its division. The magistrate, that

is the ruler of the district, takes one-tenth to one-sixth of the whole, a chief takes four shares, a stout man two, and a common man one.

The contracts of prostitutes are recognized and enforced, and the law protects them from violence or abuse.

The penalties denounced against crime by the Gentoo code are graded all the way from a small fine to crucifixion, the latter punishment being imposed for highway robbery or robbery committed by breaking through a wall. For killing a goat, a horse or a camel, a hand or a foot shall be cut off, but this does not apply to those who make their living by butchery.

In the Burmese code very great prominence is given to domestic relations and penalties for illicit sexual intercourse. The grounds for separation of husband and wife are many, and minute provisions are made for division of the property in cases of separation.

The religion of the Buddhists does not allow capital punishment. This code shows many marks of the influence of the Buddhist religion, and punishments are mainly by fines and the use of the rattan. In no case is the death penalty imposed by the code, though it is in fact sometimes inflicted by despotic rulers, and the evil passions of men sometimes find expression in bloody deeds, notwithstanding the general acceptance of a religion of peace.

Perhaps this code states the immorality of war as pointedly and gives it a more formal sanction than any other authoritative expression of legal principles.

"When there has been a revolution or change of rulers, in a country, there are four cases which may, and four which may not be prosecuted. Of the cases which may not be prosecuted, they are murder, obscene language and assault with wounding, theft, and adultery; these are the four which shall not be prosecuted after a change of kings. The five which may be prosecuted are debt, inheritance, disputes regarding lands the property of convents (church property) hereditary slaves, and deposits; these are the five which may be prosecuted notwithstanding a change of rulers." Vol. 2, Sec. 8, page 43.



No similar provision is contained in the code of Manu.

By this law the abominable crimes incident to war are excused, while the arbitrary and unjust rules of slavery and inheritance continue without regard to the fortunes of war. Though the principles of this section are not generally embodied in the published codes of the Christian states, they are recognized and enforced in practice. Except when committed in violation of military discipline, the grossest crimes of soldiers go unpunished.

Not only have the Indian law-makers evolved an elaborate body of written rules for the determination of the rights of parties, but rules of pleading, evidence, presumption and practice have also been established. By the Gentoo code a person cannot be brought into court when celebrating a marriage, while sick, or engaged in religious duties or as a *vakeel*, attorney, and generally if at work he must be allowed to finish his task. A party may appear in court either in person or by attorney, except in cases of murder, robbery, adultery, eating prohibited food, false abuse, false witness and one other disgusting offence in which the principals must answer in person. When the plaintiff and defendant come before the court the plaintiff shall state his case so "that the words be few and the meaning extensive," and that the first and last parts be well connected and consistent. If he states his case in writing the defendant must then do so. Numerous rules of pleading are given, and mistakes subject the party making them to a fine, but not to the loss of his rights. The defendant must answer within seven days and if he fails to do so judgment may be rendered against him. A person accused of murder, robbery, scandalous abuse of a magistrate, calling a woman unchaste, destruction of valuable goods, criminal conversation with the wife of the father other than the mother of the accused, or brought to answer a matter concerning a cow, a dispute over a slave girl, or drinking wine, must answer at once. In all other causes the defendant may have delay but the accuser shall in no case make delay, except in case of calamity. The Burmese version of the code fixes a general statute of limitations, barring claims for money, lands and

slaves held adversely for ten years; but in cases relating to lands and slaves given to pagodas temples and convents, boundary marks between cities or villages and a slave descended in the family from forefathers of the owner, and whose class is unknown, there is no limitation of action. The Gentoo code prescribes eleven years for chattels and twenty-one years for land, where the plaintiff is under no disability, with a longer limitation in cases of trust, extending to sixty years where it relates to land. By this code it is provided:

"When an arbitrator of discernment hears any affair he shall first demand of the plaintiff 'What is your claim?'. The plaintiff shall then relate his claim. Afterward he shall demand of the defendant 'What answer do you return in this case?'. The defendant also shall then repeat his answer. Upon thus having heard the accounts of both plaintiff and defendant, he who thoroughly investigates the nature of the affair is called an arbitrator of discernment, and such an arbitrator as this shall be chosen." Chapter 3, Sec. 1, page 103.

"When two persons upon a quarrel refer to arbitrators those arbitrators at the time of the examination shall observe both the plaintiff and the defendant narrowly and take notice, if either and which of them when he is speaking, hath his voice falter in his throat or his color change or his forehead sweat, or the hair of his body stand erect, or a trembling come over his limbs, or his eyes water, or if, during the trial, he cannot stand still in his place, or frequently licks or moistens his tongue or hath his face grow dry, or in speaking to one point wavers and shuffles off to another, or if any person puts a question to him, is unable to return an answer; from the circumstances of such commotions they shall distinguish the guilty party." Page 119.

Rules of evidence are quite different from those prevailing in the West. One may give false testimony to preserve life, and falsehood employed to procure a marriage, obtain sexual intercourse or benefit a Brahman are excusable. Page 130. Writings may be proved by a comparison of hands. Secondary evidence in the form of hearsay from eyewitnesses is allowed.

"A minor until fifteen years of age, one single person, a woman, a man of bad principles, a father, or an enemy, may not be a witness, but if the father and the enemy are men of good disposition and speakers of truth, and men are well acquainted with the goodness of their dispositions and veracity, these two persons may be witnesses." Page 124.

The legal profession of which no mention is made in the code of Manu is not practiced gratuitously as it was in ancient Rome, but the lawyer is a paid advocate whose right to compensation is enforced. Physicians also are protected by the courts, and aided in collecting their pay. The Burmese code provides:

"Oh King! if any one shall call a doctor to prescribe for a sick person, and the doctor for the sake of the pay and to relieve the sick person, shall administer medicine to him; or if the doctor is called to wash the patient's head or avert the evil influence of the stars, and shall go to where he is called, and holding a small knife or stile for writing, shall only lay hold of the banisters or ascend the stairs, and if the sick man before his arrival, shall obtain relief, and on recovery shall ask 'did you use any charm?—did you give me one of your pills?—did you wash my head, or avert the evil influences of the stars?'—and insensible to friendship shall refrain from paying; if the doctor have an affection for him, he may get off paying; but if not he shall pay five *tickals* of silver. If a good doctor reaches the banisters, stairs or door; and a good pleader, though he do not state the case, if he only put up the sleeves of his jacket, or set down preparatory to speak, they shall be paid."

"Any good pleader, though the statement of his case may not have been taken down, if he has only just sat down, or put up the sleeve of his jacket, shall have a right to his pay. There shall be no plea that the case was not noted.

"If the client shall run away or conceal himself, the pleader shall bear the whole amount of the decree. If he produce or hand over the client, he is free, and shall have a right to ten per cent for his pay and security. If a pleader be bad he must take the consequences; if a court messenger commit any

wrong, he must take the consequences; the cause he is engaged in shall not suffer.

"If a pleader shall have gained a cause he has a right to a percentage. If he loses it, he has a right to a reasonable remuneration. If it be a matter of life or death, or redemption for the same, and the client shall not suffer death, or pay the forfeit; the pleader has a right to a fee of thirty *tickals* of silver, the price of his client's body."

"If a man shall say to a doctor 'give me medicine—if I recover, take me as a slave'; if he do recover, and do not wish to become the slave of the doctor, he shall have a right to the legal price of his body, thirty *tickals* of silver." Vol. 2, secs. 19 and 20, page 49.

In Burmah trial by ordeal is allowable, but in a far more mild form than that which once obtained in Europe.

"Oh, excellent king! the decisions by ordeal are as follows: 1st., each of the parties are made to take one *tickal* weight of water in their mouth, and light candles of equal length; this is called the trial by fire: 2d. the trial by water, both parties are made to go under water: 3d, both parties are made to chew one *tickal's* weight of rice; 4th, both parties to dip into molten lead. Of these four, in the trial by fire, let the person whose light goes out first be the loser if before the light goes out, one shall cough out the water from his mouth, in consequence of some portion having gotten into the trachea, let him lose; if the lights go out together, and neither cough out the water, let them spit out the water, and on weighing it, the person whose water weighs least, loses. In the trial by water, let the person who first comes up lose. In the trial by chewing rice, let each be made to chew one *tickal's* weight, and if before the cup with which time is measured sinks, the rice of one be all finished, or swallowed) and one not, let the one whose rice is not finished lose; if they be finished together, let them wash out their mouths in a cup, and let him in whose water there is the greatest portion of rice lose, and let him whose water is the cleanest win. As regards dipping into (molten) lead let the person who is burned lose, and he who is not burned win. Thus the recluse said." Vol. 9, sec. 16, page 254.

Witchcraft was recognized and dreaded and is defined, detected and punished in accordance with the provisions of the next section which gives some idea of the superstitions which prevail in that country.

"Oh, excellent king! as regards the seven kinds of witches, or wizards; there is the witch who is so by reason of his condition; the two who are so by reason of medicine; the four who are hereditarily so by reason of the Nat of their parents, taking up his abode in the person continually, these are the seven. Of these seven the witch called *hman-wen*, or *kaway myouk*, is the greatest; next below him is the *kneet-padat*, the next is *ieng-ta-lien* or *goung-pyan*, the next *sau-ganee*, the next *tha-tsong*, the next *kyay-tsong*, and the next *let-touk-tsong*.

"Of these kinds of wizards, the *atha-tsong*, *kyay-tsong* and *let-tsong* are those who at night eat flowers and parched grain within the enclosure around their own houses, fire issuing from their mouths. Of these the *kyay-tsong* and the *let-tsong*, become witches by taking certain medicines; the *atha-tsong* are so constitutionally, they do not bewitch people. If they are thrown into water seven cubits deep, they can sink so as to leave one, two or three knots of the rope above water. These are not proper objects to be banished from the village or district but the person who accuses them is not to be held in fault, he had a right to accuse them. It shall not be said that they sank in the water or that they floated. The statement of both parties, accuser and accused, is true; they are and they are not witches; let them therefore bear the expenses equally.

"Besides these; the *kaway* cannot sink in the water, and the *kneet-padat*, though with great exertion, he can get under the water, he can only sink two knots (or cubits), five are left above water; the *ieng-ta-lien* and the *sau-ganee* are the same. These four are wizards by reason of the Nat, who has been worshipped by the ancestors in succession, taking up his abode in their bodies. They eat the food put out for them in the small flat bamboo frames used for winnowing grain, and in little baskets; they bewitch people so as to cause their death,

and then eat them; they also dig up the human bodies from the grave and eat them. Of these (the last), three cannot bewitch a person across a running stream, and even in the same village or district, they cannot bewitch a person seven houses distant. If these float, they must be banished the district. The *kaway* can bewitch a person even if a stream intervene, so this witch must be banished beyond several streams, to free the village from his influence. In these seven matters, these are truly the traditionary rules from the beginning of the world for trying any man or woman who practices witchcraft. In accordance with them, let the guardians of the law, the king, nobles, *thoogyees*, and heads of villages, after having arranged all the preliminary steps in strict conformity with the ceremonial prescribed for the trial of the seven kinds of wizards by the ancient teachers, select a piece of still water where there is no current, and in which there are no stumps of trees, rocks, or inequalities, and throw them into it. All matters connected with witchcraft are only made clear by the ordeal of water. As regards the doctors *tamee*, *yooaytan*, and other things, they are uncertain, and not to be depended on, whether the witch has bewitched another, and the fact is discovered, or the witch or wizard of themselves confess that they are so. The four witches above mentioned, even if people are afraid to associate with them, should be admonished by the three gems (god, the law, and the priests), and warned to desist (from these evil practises) and they should be called on to declare in the presence of the gems that they will observe the (five) moral duties and will renounce their bad habits, and to swear by the three gems that they will in future practice good works. This is the way good kings, embryo Boodahs, decide, and if the king passes sentence in like manner, the rains will be abundant, the rivers full, and the country flourishing and quiet. Thus the son of the king of Brahmahs, the recluse called Menoo said."

The race which developed so complete a system of laws and of the administration and application of them to all forms of controversies has utterly failed to construct a form of government adapted to wide dominion or designed to check

the abuses of rulers. All the great empires of India of which we have any account have been established by foreign conquerors.

The authority of the king was in most instances established by military force. He might be a member of either the Bráhma-man or Cshtriya caste but very rarely of an inferior one. The superiority of the Brahmans has been perpetuated by education rather than by military force or political combination. The Brahmans learned and conducted the religious rites and ceremonies and claimed to stand next to the gods. They were the teachers and expositors of the laws and to them were referred all questions of right. Their enduring ascendancy is clearly traceable to education and the recognized law of inheritance, not merely of property, but also of caste, of personal status, as a superior order.

The Brahmans from very early times have been readers and writers. The mass of literature produced in the past is very great. Just when and how the various provisions found in the codes first came to be adopted there is no available means for determining.

The religious conceptions of the people have tended to individuality and segregation rather than extended combinations. The idea has prevailed that a man may purify and elevate his own soul by separation from his fellow men, through meditation and religious studies and observances. Testing moral worth by the good done to others and the value of social combinations by the advantages of mutual help, seems to have been generally discountenanced. Perhaps it may be difficult to establish a charge of general lack of fraternal feeling among the people, but it seems clear that there has not been great capacity for organizing and combining to accomplish common ends. The common mistake of rating the relation of the individual to an imaginary personal god as of more importance than his relation to his fellow man and of assuming that there can be merit in conduct which does not tend to the well being either of the individual himself or some other person, has prevailed there, yet possibly not more generally than in other parts of the world.

To abstain from all crimes and vice is the observance of a part of the moral law, but the more important and more difficult task is to promote the welfare of the individual, his family and all others whom he can aid. The first may be termed passive morality, the second active. Passive morality affords peace and repose, active morality leads to a full and glorious life of enjoyment and satisfaction. In India as well as in Europe the most extended combinations of the strength and vigor of men have been formed for vicious purposes. The activities of war have generally appeared greater than those of peace, though exerted for immoral ends. Thousands of years of combinations of men to destroy each other have not yet taught them to make equally great combinations for mutual aid.

The relative value of the civilization of any country cannot be safely gauged by the conditions existing at some selected point of time. If estimated in the eleventh century, Europe must have been condemned as the country of robbers and murderers, or if during the thirty years war as one in which the people generally had gone mad over religious meditations and discussions.

The people of the United States of America from 1861 to 1865 must have been condemned as a great family of fratricides, who deliberately sought each other's destruction without just cause on either side.

Measured by the conditions prevailing throughout the last one, two or three thousand years, it may well be claimed that the civilization of India has been superior to that of Europe. There have been more people, and they have been less at war with each other and better supplied with enjoyable things than the Europeans as a whole. It is only within the past hundred years that population has multiplied rapidly in Europe and the general scale of comfort among the masses materially advanced. All this gain comes from diminished efforts to destroy each other and more numerous and extensive combinations for mutual profit and advantage. It is strange indeed that men are so slow to perceive how quickly and bountifully obedience to the command to love and help one another is rewarded.



If all men knew that they must remain on earth through successive incarnations and must find heaven or paradise here and not elsewhere, possibly there would be more disposition manifested to make the world better during this life in order to prepare it for the next. Whether the souls of this generation shall return and inhabit the earth in the next or not is a matter of belief rather than of knowledge, but certain it is that our children and their descendants must abide in it till the race becomes extinct. No legacy can be passed down to posterity of such inestimable value as a well learned lesson of peace, concord and mutual aid. The boundaries of the moral law will be found coterminous with those of the true relations of man to man and to the living beings on earth. British rule in India has not yet revolutionized the educational system. The policy of giving free and universal instruction to the young does not prevail in the British Isles and very naturally would not be carried into India. The British have however made progress in introducing those great exponents of modern civilization, the railroad, telegraph, printing press and post office. Through these practical lessons of coöperation are taught and local animosities are diminished by commercial intercourse and social contact. The eradication of caste prejudices is a task of great difficulty and can only be effected by radical changes in the educational system and religious teachings. The British maintain their rulership largely by taking advantage of local animosities and caste distinctions through which the natives are deterred from combining, and the government employs one to curb another. Increased intercourse with each other and with the outside world must in time produce their logical effects on the people, but the inertia of such a mass is very great and can only be overcome in a long period of time or by an exceptional wave of enlightenment, such as comes to any people only once in many centuries. India has had its experiences of this kind in the past and may again in the future.

NOTE.—The extracts from the code of Manu are taken from the translation of Sir William Jones edited by G. C. Houghton and published by Cox & Baylis, London in 1825. Those from the Burmese Code are from a translation published by the Baptist Mission at Philadelphia in 1848.

## CHAPTER X

### CHINA

In the study of any subject allowance must be made for perspective in order to gain a just comprehension of it. China is not merely geographically at the antipode to western Europe and America, but it is equally remote and dissimilar in its civilization. First consider what the Chinese Empire is geographically. In area it covers about 4,200,000 square miles, about 421,000 square miles more than all Europe. China proper has an area of about 1,312,326 or about 389,000 square miles less than Europe, exclusive of Russia. In climate it includes all varieties from the tropical district of Kwang Tung, to the regions of perpetual snow in the mountains of Thibet and Mongolia. In soil it has all gradations from the inexhaustible fertility of the rich loess lands of Chili, Shan-Si, Shen-Si, Kan-suh and Ho-nan to the barren rocks and sandy deserts of Gobi, and the equally barren peaks of the Thian-Shan and Kuen-Lun. Its surface shows every variety of formation from level plain to craggy mountain, and the most varied flora from the dense growth and endless variety of the tropics to the poverty and barrenness of the regions of perpetual frost. Its majestic rivers are but slightly inferior to the Mississippi, the Amazon and the Nile. Its fauna is rich and varied in species and numbers. But in nothing else is it so marked as in the numbers of its people and its unique civilization. The latest estimates accredit the empire with 400,000,000 or about 45,000,000 more than all Europe contains. While the empire includes many tribes not of Chinese stock, and differing more or less in type from the Chinese, the great bulk of the population is distinctly of one race, speaking one language, with no more difference of dialect than is found in England, France or Germany. This vast empire is now, and for many centuries has been, ruled by one

government, while Europe with its boasted superiority is divided at this day into nineteen separate and independent nations. Not only do the people of one of these nations speak a language different from that of nearly every other, but several of the nations include people speaking many different tongues. The United Kingdom of Great Britain and Ireland, with a population about equal to that of the province of Kiang-Su, includes English, Welsh, Scotch and Irish. Russia includes Laps, Finns, Russians, Poles, Slavs, and Cossacks, differing widely from each other in language, customs and race characteristics.

China proper is divided into eighteen provinces, but all are under one government and one system of laws. The political map of Europe, ever since history began, has been subject to frequent and great changes. The nineteenth century has seen nations rise and fall and boundaries of nations expand and contract from one decade to another, to such an extent as to render a map twenty years old utterly unreliable.

While China has had its internal wars and has at times been subjected to a divided rulership, it still has maintained its integrity as a nation through thousands of years. It has been conquered by Tartars without revolutionizing its customs and laws, and with but slight effect on the great Chinese mass. Through all changes and vicissitudes the civilization to be found in China has been distinctly Chinese. Long before letters were introduced into Greece, the Chinese had their unique system of characters. The name of the inventor and date of the invention are given in one tradition as Fuh-hi 3200 B.C. and in another as Tsang-ki 2700 B.C., either date however is sufficiently remote to precede the time when Cadmus carried the alphabet into Greece by over 1500 years. That much progress in agriculture and the arts had been made long before the Greek tribes migrated from Asia Minor into Greece, is amply proved by the historical records of the Chinese, which extend back in credible and definite form at least as far as the reign of Yaou 2356 B.C. The first weaving of silk is ascribed to Si-ling-shi, wife of the Emperor Hwang-ti, about 2600 B.C.

For early records of China, we look only to China. No neighboring nation can furnish us contemporary side lights. Of all the people of eastern Asia the Chinese first invented a written language and first became historians. Whether in authentic writings they antedate the Egyptians is a question on which archeologists may differ, but certain it is that their early histories are far more numerous and copious than those of any other people on earth. It is surmised by some, that the progenitors of the race migrated into China from the vicinity of the Caspian Sea, but the writer does not know on what evidence, for no ancient Chinese record is referred to as proving it, and there are no older or other records on the subject.

The Chinese, like the Egyptians, were first found in the country they now inhabit. Their civilization has grown and continued to abide where it now exists. It has until very recent times received no marked impulse from without except the Buddhist religious teachings. No conquering horde has ever swept over the provinces of China and supplanted the ancient race with its own people. The Tartar conquest begun by Jenghiz Kahn and completed under Kublai, while bloody and destructive in the paths of the invading armies, failed to destroy or supplant the ancient stock. The subsequent Manchu conquest was a change of rulers, but slightly affecting the great multitude. Throughout all ages China has been secure against outside foes, except such as entered from the North. The barren inaccessible heights of the Himalayas on the south have ever interposed an impassible barrier against invasion from that direction. The barren steppes of Thibet and Mongolia could only be reached from the west after crossing the mountain ranges of central Asia. Only from the north has it been found practicable to lead in an invading army, and that cold and inhospitable country has not frequently poured out hosts of such magnitude as to overrun the densely peopled provinces of China, and never sufficient to drive out the people.

Like all other people, in their accounts of the origin and early history of their race, the Chinese narrate what is evidently fabulous and imaginary. Records cannot antedate the

art of making them, and traditions receive an accretion of the marvelous as they are passed down from generation to generation, till the real basis of truth is covered up and indiscernible. The period of 2,267,000 + years, given by Chinese writers as having elapsed between the creation of man and the time of Confucius, is entitled to no more and no less credit than any other attempt at fixing the date of man's advent on earth. Nor could anything be more whimsical than an attempt to blend and harmonize authentic Chinese history with the Mosaic account of creation.

The earliest accounts and traditions locate the Chinese along the Yellow River in and about the province of Shan-si, and while Chinese writers mention numerous long dynasties anterior to his time, Fuh-hi appears to be about the first ruler whose existence at some date appears fairly certain. The date of his accession to the throne is variously estimated from 2852 to 3322 B.C. He and his seven successors are said to have reigned 747 years, giving an average of 93 $\frac{3}{8}$  years to each. While such periods are shorter than the lives of Biblical patriarchs, they are equally improbable and afford no data for computing the time of events. To Tuh-hi is attributed the *Yih-King*, or Book of Changes, which stands at the head as the most ancient of the Five Classics. The work appears to us rather whimsical, being made up of essays on important themes, illustrated by a combination of whole and broken lines treated as different principles, placed one above the other in various orders, and which are regarded as symbolical of the subjects discussed. Perhaps, however, as symbols these linear combinations may have meant more to the Chinese than they do to us.

The early reigns are sometimes spoken of as though the sovereign occupied the same relation to the people as in later years, yet it is said that the successors of Hwang-ti were elected by the people. The reign of Yao 2356 B.C. is taken as the starting point of authentic history. In his reign there was a great flood causing a permanent overflow of much land. This was remedied by works carried on under Yu, who afterward succeeded to the throne. Little appears to be recorded

concerning the condition of the people or the constitution of the government. The ruler is always treated as the subject of the theme and matters of real interest are mentioned only incidentally. It is evident, however, that in the earliest times of which any accounts are preserved, the Chinese tilled the soil, had domestic animals and wove. Yu established markets and fairs to accommodate trade. In his time the Empire is said to have extended from twenty-three to forty north latitude and six degrees west and ten degrees east from Peking; this includes the greater part of China proper. The reigns of Shun and Yu have been immortalized by Confucius and possibly he has depicted their characters in accordance with what a ruler should be, rather than with what these rulers really were.

From the time of Yu the throne became hereditary, but the system prevailing appears to have been similar to the feudal system of Europe in later times. If the character of the rule of Yu is correctly given in the answer of Kaogao, as given in the *Shu King*, he acted on most enlightened maxims. "Your virtue, O Emperor, is faultless. You condescend to your ministers with a liberal ease, you rule the multitude with a generous forbearance. Your punishments do not extend to the criminal's heirs, but your rewards reach to after generations. You pardon inadvertent faults however great, and punish deliberate crime however small. In cases of doubtful crimes you deal with them lightly, of doubtful merit you prefer the highest estimate. Rather than put to death the guiltless, you will run the risk of irregularity and laxity. This life loving virtue has penetrated the minds of the people, and this is why they do not render themselves liable to be punished by your officers."

The historic accounts of the early rulers of China are essentially the same as those of monarchs everywhere who are subject to no efficient restraints. There were wise, and able founders of dynasties, who ruled for the good of the people, followed by degenerate offspring who were dissolute, cruel and oppressive. No instance is recorded in history of a long succession of hereditary monarchs who have maintained a high standard either of capacity or virtue. It is hardly worth while

at this time to moralize on the causes of the degeneracy of ruling houses. The fact that it invariably takes place is the matter of prime importance.

The Shang dynasty founded 1766 B.C. ended 1122 B.C. and was followed by the Chau. The reign of its founder Wu Wang is looked to as a kind of golden age in Chinese history, yet he committed the blunder of dividing the empire into seventy-two petty feudal states, leaving himself only a small portion of territory and power. The number of these states was at one time as high as 125 and in the time of Confucius fifty-two. The effect of this division was unceasing internecine wars, which would have rendered the whole an easy prey to a powerful outside foe. In 936 B.C. the Tartars made their first incursions of which we have any account, which were continued from time to time thereafter. At the birth of Confucius 557 B.C. the empire was in this unhappy condition. Though the Chau dynasty covers a period of weakness in the central power and, as has always happened under a feudal system, of strife and bloodshed among feudatories, it yet endured longest of any in the history of the empire, covering a period of 873 years down to 249 B.C. It was during this dynasty that those men appeared on earth who have exercised such marked influence on Chinese thought, habits, culture and society. Gautama, Confucius, Mencius and Lao Tze, have each left distinct and enduring imprints of their teachings. Gautama, deified as the incarnation of Buddha by his devotees, taught men to do good deeds and live pure lives in order that they might be happy in a future state of existence. Though a native of northern India, his disciples spread his doctrines into China in an early day, and his followers soon became very numerous and have so continued to the present time.

Confucius was a teacher of earthly wisdom rather than the founder of a religious sect. He claimed no higher sanction for his doctrines than reason and the tests of experience. He sought to establish justice and promote the happiness of men on earth. One of the means to these ends was a strong government honestly and faithfully administered. Another was

education of the young in correct principles. In character he was much like Socrates, but more practical in his methods. He was not averse to assuming responsibility and putting his maxims into practical operation. Far more than any other man, he has moulded Chinese customs and character down to the present time. The antiquity of Chinese literature is well shown by the works of Confucius. His *Shu King*, or Book of History, consists of ancient public documents from the time of Yao 2356 B.C. to King Hsiang 627 B.C. These include imperial ordinances, plans drawn up by ministers for the guidance of the emperor, imperial proclamations, vows of the monarch before Shang-ti when going out to battle, and mandates, announcements, speeches, etc. by ministers of state. These were edited by Confucius with his comments. Confucius gathered the learning of the past and inculcated the study of the wisdom of the ancients. He was far more a compiler than an author. Of the five classics, though all bear marks of his labors, only the *Chun Tsiu* or Spring and Autumn Record was originally written by him. The *Shi King* or Book of Odes is a collection of odes and songs originally gathered from all the provinces by the emperor Wang Wau, numbering three thousand, most of which were lost however before the time of Confucius. These odes were used in connection with public and religious services. Only 311 of them are now extant.

Not the least important in its practical effect on after generations is the *Li-ki* or Book of Rites. No other people are so fond of ceremony as the Chinese. How far back in antiquity this fondness extended we are not informed, but a ritual is attributed to Duke Chau, 1130 B.C., on which much that is observed at the present day appears to be founded. Though filled with ceremonial, the book of Rites also teaches the principles governing the conduct of members of the family toward each other, of citizens toward officials, of officials toward citizens and each other. No other of the classical books appears to have exercised so profound an influence on succeeding generations. Not only has it established a vast multiplicity of forms and ceremonies to be observed each day, but



it has profoundly impressed on all generations its fundamental principles, respect, amounting very nearly to religious veneration, for parents and rulers and politeness to everyone. With these classical books the name of Confucius is inseparably connected. Neither of them is a law book in the sense in which the term is used in the west, nor yet are they religious compilations in a western sense, but many of the rules they contain are more generally obeyed than any act of Congress or Parliament, and many of the moral precepts they teach are oftener repeated, and as generally accepted, as any of the truths contained in the Bible are in Europe or America.

The secret of the remarkable influence of these "Five Classics," as they are termed, seems to lie in their consonance with Chinese tastes and character. No other people have half the respect for what is ancient that they do. Though put in form by Confucius, the material was already in existence, and he professed merely to compile the wisdom of the past. The age in which Confucius lived was one of weakness in the central government and of war and contention among the inferior rulers. Robbers and maurauders appear to have been numerous. He sought to permanently remedy the evils resulting from these conditions.

The Chau dynasty ended with the accession to the throne of Chwang-si-ong Wang. After but three days reign he died leaving the empire to his thirteen-year-old son Chi Hwangti. By the extermination of the imperial house he established his power, and by conquest of the petty states extended the boundaries of the empire to include most of China. He divided the country into thirty-six provinces over which he placed governors, whose conduct he supervised. From his time the essential features of the present governmental system seem to date. He finally overthrew the feudal system and firmly established the central power. Nor was he possessed of the spirit of reverence for the wisdom of the past which has since been so general. The title he assumed of First Emperor and his destruction of all records written anterior to his reign, evidence his vanity and desire to be regarded in history as the founder of the empire. He prob-

ably was the first to rule all China. Although his order to burn all ancient writings was carried out and nearly 500 of the literati were burned alive to complete the infamy, not all the copies were found by the vandals and so much was preserved in the memories of scholars, that the classics were again reproduced by the generation then living. The peculiar system of education then and now prevailing in China resulted in literal memorizing by the scholars of the texts of these works. Copies of some of the classics are also said to have been found more than a century later, concealed in the walls of Confucius' house. The destruction and reproduction of these works indicate the prevalence of education at the time.

Though detached portions of the great wall along the northern border of the empire had been built by the states for their security against Tartar incursions, it was in the reign of Hwangti that the work of joining these together into one complete and continuous defense was undertaken, and successfully carried out soon after his death. No other evidence remains which so surely proves the vast extent of the empire and the numbers and industry of the people as this great work. The construction of a wall 1500 miles long, twenty-five feet thick at base and fifteen at top from fifteen to thirty in height, with detached towers at intervals, could not have been accomplished without the coöperation of a vast multitude of workers, within the period of ten years in which it was built. The pyramids of Egypt are diminutive in comparison with this great structure.

Chi Hwangti died 210 B.C. His weak and debauched son was unable to curb the turbulent leaders and was soon deposed. After five years of civil war, Liu Pang overthrew his rival and was proclaimed emperor. This was followed by the Han dynasty which continued till A.D. 221. The founder, Liu Pang, is accredited with having instituted the system of competitive examinations for office, though by some authorities the perfection of the system in its present form is fixed at A.D. 600. His successor appointed a commission to restore as far as possible the texts of the literary works destroyed by order of Hwangti. A period of comparative peace and pros-

perity followed, but about the beginning of the Christian era a rebellion broke out followed by disorders which resulted in the establishment of the eastern Han dynasty. A.D. 65 Buddhism was introduced into China and about the same year an embassy was sent into Turkestan, soon followed by an acknowledgment of sovereignty of the emperor over Shen-Shen, Khotan, Kuche and Kashgar. Their allegiance, however, soon fell off.

A.D. 220-221-222 the empire was partitioned between three rival warriors into three kingdoms, the southern of which included modern Tonquin. This partition was followed by a long period of war and turmoil, during which power was wielded only by such as demonstrated their ability to maintain it. In 284 an embassy from the Roman Emperor Theodosius was sent into China. This appears to have been the first case of official intercourse between China and Europe. In 419 the eastern Tsin dynasty came to an end and the empire stood divided between the northern and southern. Disorders continued until 590 when Yang Keen established the Suy dynasty. He restored comparative peace and prosperity to the country, though he fought and defeated the Tartars and Coreans. He caused a survey to be made of his dominions and divided them into *chau*, *kuen*, and *hien* with corresponding officers, and this arrangement is still retained. At the close of his reign, which lasted sixteen years, one of his sons forced the heir to strangle himself and usurped the throne. He waged successful war against the Tartars and increased the imperial library to 54,000 volumes. The burdens he imposed on the people, in carrying on his wars and schemes of internal improvements, caused a rebellion which terminated in his assassination.

In 617 the heir to the throne having been poisoned, Li Yuen, a great general, proclaimed himself emperor under the name of Tai-tsung, founder of the Tang dynasty. During his reign China was without doubt the most civilized and peaceful country on earth. With the crumbling of the Roman Empire, Europe had settled into a period of ignorance and brutality from which it did not emerge for many centuries. Chang Kwan, the son and successor of Li Yuen, is spoken of as the

most accomplished prince in Chinese history. He established schools and perfected the system of literary examinations. He ordered a complete edition to be published of the Classics, and paid special honors to the memory of Confucius. He promulgated a code for the direction of the judges. He had a just appreciation of the responsibilities and dangers of a sovereign and an anecdote is related that, when sailing on the river Wei, he said to his sons: "See, my children, the waves which float our fragile bark are able to submerge it in an instant. Know assuredly that the people are like the waves, and the Emperor like the fragile bark."

In his reign the boundaries of the empire were greatly extended toward the west, including Kuche, Khoten, Khorasan, Kashgar and the Turkish tribes as far as the Caspian Sea, over each of which was placed a military governor. Ambassadors were sent to the imperial court from Persia and Rome. In 635 a Roman priest was received and the emperor built him a church. On the death of Chang Kwan, posthumously styled Tai Tsung, and the accession of Kaou-tsung, his wife, Woo How, became the real master of the emperor and at the death of her husband she set aside the heir and seized the throne. She ruled with vigor and her armies were victorious. The usual round of vigor on the throne, followed by vice, external wars and internal rebellions, followed at last by a division of the empire into many petty warring states, filled out the balance of the Tang and five other brief dynasties succeeding it. In 960 General Chaou Kwang-yin was proclaimed emperor by the army, which at that time seems to have held all power, as did the Praetorian guard at Rome in earlier times. In the tenth and eleventh centuries there were wars with the Tartars and Khitans, resulting at times in the payment of tribute by China to the Khitans.

Abbe Huc relates that in the eleventh century under the Sung dynasty there were socialists in China and that there was much radical political discussion. At the head of the reformers was Wangngan-Chi, a man of remarkable talents, great learning and energy. Instead of showing profound devotion to the wisdom of the ancients, he attacked the existing

order of things unsparingly. He charmed the emperor Chiu-tsoung with his brilliant presentation of his doctrines and gained great influence over him. In the sketch taken from the work of M. Abel Remusat his teachings are thus summarized:

"The first and most essential duty of a government is to love the people and to procure them the real advantages of life, which are plenty and pleasure. To accomplish this object it would suffice to inspire everyone with the unvarying principles of rectitude, but, as all might not observe them, the state should explain the manner of following these precepts, and enforce obedience by wise and inflexible laws. In order to prevent the oppression of man by man the state should take possession of all the resources of the empire and become the sole master and employer. The state should take the entire management of commerce, industry and agriculture, into its hands with the view of succoring the working classes and preventing their being ground to the dust by the rich."

Tribunals were to be established to fix the prices of provisions and merchandise and taxes to be imposed exclusively on the rich for a certain number of years. Aged paupers and unemployed working men were to be relieved from the treasury. The state was to be the only proprietor of the land, which should be assigned to the farmers by public authorities, who should also distribute seed, to be returned after harvest. The leading opponent of these doctrines was Sse-ma-kouang, who employed modern arguments in opposition to these schemes. Wangngan-Chi was given full authority to put his reforms in operation and maintained his ascendancy throughout the reign of Cheu-tsoung. He added his own commentaries to the classical books, and reformed the examinations for literary grades to correspond with his own views. This brought down on him the hostility of the literati as well as of all the privileged classes, and on the death of the emperor he was deposed and his rival put in power. At the death of Sse-ma-Kouang great honors were done his memory. Later there was a revulsion of sentiment and his tomb was dese-

crated and great honors were paid to the memory of Wang-nan-Chi. While according to Huc Chinese historians record the ill success of these schemes, the institutions of China seem to bear some marks of his doctrines at this day as will appear more fully when we enter on a consideration of the existing system. On the other hand it is said that the reign of Chiu-tsoung, lasting forty-one years, is the brightest period of the dynasty. Certain it is that the discussion carried on at this time produced a profound impression on Chinese polity.

Between 1127 and 1163 the Kins pushed their conquests till they overran the northern provinces of Chi-li, Shen-se, Shan-se and Ho-nan and even advanced to the Yang-tze-Kiang. At this time the power of the Mongols was growing. The invasion of China under Jenghiz Kahn commenced in 1212. He first attacked the Kins and overran most of the country occupied by them. He was succeeded by his son Ogdai who completed the overthrow of the Kin dynasty. Among the Mongols codes of laws were unknown, but Ogdai found it necessary to promulgate a code and divide his new and populous dominions into ten departments. Ogdai was followed after two brief intervening reigns by Mangu, who extended his conquests to the south as far as Cochin China. On his death in 1259 he was succeeded by the illustrious Kublai, who completed the subjugation of the empire and ruled from the Yellow Sea to the Dnieper and from the Arctic almost to the Strait of Malacca. This was the first foreign dynasty ever established over all China.

The ambassadors sent by the Emperor Theodosius, A.D. 284 do not seem to have given any extended report of what they saw in China. In the Arab "Chain of Chronicles" is contained an account of a visit to the Chinese court by Ibn-Vahab in the ninth century. The description of what he saw, though meager, corresponds with other accounts of the state of the empire at that time. To Marco Polo we are indebted for the first full and satisfactory account of China and its civilization. His visit was during the reign of Kublai, whose empire was then the most extensive ever established in Asia, so far as is known. His description of the court and life of

Kublai exhibits a combination of the customs of the Tartar nomad and the ceremonious Chinese courtier. During December, January and February, the emperor resided in the palace at Kambalu. This palace is described as a complete square, a mile on each side. This is but the outer wall and edifices; within are others affording accommodations of all sorts for the people and their stores of goods, etc. and gardens with game preserves, and fish ponds. The inner palace he says "is the greatest that ever was seen. The floor rises ten palms above the ground and the roof is exceedingly lofty. The walls of the chambers and stairs are all covered with gold and silver and adorned with pictures of dragons, horses and other races of animals. The hall is so spacious that 6,000 can sit down to banquet, and the number of apartments is incredible. The roof is externally painted with red, blue, green and other colors and is so varnished that it shines like crystal and is seen to a great distance around. It is also very strong and durably built."

The city is described as very large with broad, straight and regular streets inclosed by a wall with twelve gates at each of which 1,000 men kept guard. Around the city were twelve very populous suburbs containing many stately edifices. The guard of the great Kahn consisted of 12,000 horsemen. The festivals held on the Kahn's birthday and the beginning of the new year were celebrated with great magnificence and the making of presents. On the latter day the presents from those holding land and offices, he states, included vast quantities of gold, silver, precious stones and merchandise, 5,000 camels, 100,000 white horses and 5,000 elephants, all of which were exhibited in a grand procession. For hunting he kept leopards, lynxes or stag-wolves and lions, as well as dogs. On his great hunts he was attended by two parties of 10,000 men each with 5,000 dogs. Besides these he had great numbers of gerfalcons, vultures and falcons for hunting. At the expiration of the three winter months, the great Kahn sallied forth with a vast retinue. At a place named Choccia he pitched his tents, 10,000 in number. That in which he held court was of sufficient size for 1,000 knights, but he resided in another.

The inside of this was lined with the finest furs. No one was permitted to take game from March to October, nor to keep dogs or falcons within twenty days' journey from his residence. At Shandu in Tartary he had a very large palace, which he occupied while hunting in that region and as a residence in June, July and August. The great number of horses, dogs and other animals and the custom of moving from place to place and dwelling in tents and movable palaces, accords with the inherited tastes and habits of the Tartar, while the elaborate ceremonials at the capital and elsewhere show the influence of Chinese customs on the Kahn. The description of the cities and country visited by Marco clearly shows how fully the great Chinese mass retained its habits, manners and customs, and how little effect the Tartar conquest had on Chinese civilization throughout the empire. The Tartar hordes were able to overcome the Chinese armies, but the countless multitude of busy farmers, manufacturers and traders plodded along the same as before, using the old language, literature and customs. Marco describes separately thirty-five different cities. He devotes the most space to Kin-sai, modern Hang Chau, which he says was without doubt the largest city in the world. The magnificence of its streets, stone bridges, buildings, canal, lake, boats, markets and shops, as well as on the great multitude of people and endless quantities of all the necessities of life, he details at length. In all the cities he visited he was astonished at the numbers of people and the abundance of the provisions for their comfort. Peace and plenty were the rule through the empire, with but few exceptions.

Marco's description of the system of government and of the laws is very incomplete. He says there were twelve very great barons, who held command over all things in the thirty-four provinces. They all resided in the city of Kambalu, managed all the provincial affairs according to their will and appointed the lords of the provinces. For every province there was an agent and a number of writers or notaries. The twelve barons, called *scieng* in the Tartar language, ordered the army to move wherever they willed, subject to the direc-



tion of the great Kahn. These are probably the same officers he refers to as a council of twelve persons, having power to dispose of the lands, governments and all things belonging to the state, though not necessarily so. That arbitrary power was exercised by the Kahn and his chief officers on occasion is clearly manifest from the account he gives of the corruption and oppression exercised by a Saracen named Achmac. He gained so great influence over the Kahn that no one dared to oppose him. "Any charged by him with a capital offence, whatever means he might employ to justify himself and refute the accusation, could not find an advocate, for none dared to oppose the purpose of Achmac. Thus he unjustly caused the death of many, and was also enabled to indulge his unlawful propensities. Whenever he saw a woman who pleased him, he contrived either to add her to the number of his wives or to lead her into a criminal intimacy." This sway continued twenty-two years. Finally the Kataians formed a plot against him and killed him in the palace. For this the ringleaders were summarily executed. On the return of Kublai, who was absent from Kambalu at the time, he inquired into the cause of the trouble and, finding Achmac's seven sons equally guilty with their father, who had conferred high offices on them, he caused them to be flayed alive.

The facilities for communication with remote provinces were exceptionally fine. Great routes were established along which, at intervals of from twenty-five to forty miles, commodious inns, well provided with comforts, were established, in connection with which horses in great abundance were constantly kept. Public officials and messengers were lodged at these inns and furnished relays of horses. Of these inns there were more than 10,000 and of horses kept in connection with them more than 200,000. At intervals between these stations were others of foot runners, three miles apart, who carried letters and packages from station to station at the rate of 100 miles a day, while horsemen made from 200 to 300 miles in twenty-four hours. Similar inns and couriers on foot and on horseback are still maintained in some parts. The paternal care of the great Kahn over his people Marco praises in this language.

"He sends his messengers through all his kingdoms and provinces, to know if any of his subjects have had their crops injured through bad weather or any other disaster, and if such injury has happened he does not exact from them any tribute for the season or year, nay he gives them corn out of his own stores to subsist upon and to sow their fields. This he does in summer, in winter he inquires if there has been a mortality among the cattle and in that case grants similar exemption and aid. When there is a great abundance of grain he causes magazines to be formed, to contain wheat, rice, millet or barley, and care to be taken that it be not lost or spoiled: then when a scarcity occurs this grain is drawn forth and sold for a third or fourth of the current price." The monetary system Marco thus describes,

"With regard to the money of Kambalu, the great Kahn may be called a perfect alchymist, for he makes it himself. He orders people to collect the bark of a certain tree whose leaves are eaten by the worms that spin silk. The thin rind, between the bark and the interior wood, is taken and from it cards are formed like those of paper, all black. He then causes them to be cut in pieces and each is declared worth respectively half a livre, a whole one, a silver grosso of Venice and so on to the value of ten bezants. All these cards are stamped with his seal, and so many are fabricated that they would buy all the treasuries in the world. He makes all his payments in them and circulates them through the kingdom and provinces over which he holds dominion, and none dares to refuse them under pain of death. All the nations under his sway receive and pay this money for their merchandise, gold, silver, precious stones and whatever they transport, buy or sell. The merchants often bring to him goods worth 400,000 bezants and he pays them all in these cards, which they willingly accept, because they can make purchases with them throughout the whole empire. He frequently commands those who have gold, silver, cloths of silk and gold, or other precious commodities to bring them to him. Then he calls twelve men skillful in these matters, and commands them to look at the articles and fix their price. Whatever they name

is paid in these cards, which the merchant cordially receives. In this manner the great sire possesses all the gold, silver, pearls and precious stones in his dominions. When any of the cards are torn or spoiled the owner carries them to the place where they were issued and receives fresh ones with a deduction of three per cent. If a man wishes gold or silver to make plate, girdles or other ornaments, he goes to the office, carrying a sufficient number of cards, and gives them in payment for the quantity which he requires. This is the reason why the great Kahn has more treasure than any other lord in the world, nay all the princes in the world together have not an equal amount." This currency went out of use on the expulsion of the Mongols. The new dynasty issued notes at first but discontinued them about 1455.

Kublai was tolerant of all religions and employed Saracens, Christians and Buddhists as well as idolators of all kinds and unbelievers. His domestic establishment was on a grand scale. He had four wives, each of whom ranked as an empress and had 300 maidens with eunuchs and other attendants. Besides these he had his concubines. By his wives he had twenty-two sons and by his concubines twenty-five. How many daughters is not stated. Marco speaks of the manufacture of beautiful porcelain, describes how all the people burn black stones instead of wood, and drink wine made from rice and many good spices. In Kin-sai each householder had written on his door the name of all the members of his household, which he revised when a birth or death occurred. This is still required. What most impressed Marco was the peace, good order, abundance of wealth and patient industry of the people. He also highly praises the integrity of the merchants of Kin-sai. Perhaps the most lasting monument to the energy and public policy of Kublai is the grand canal which he extended and greatly improved.

After the death of the great Kahn the Mongol dynasty was continued under Timur, his grandson, and Wu Tsung. Ching Tsung last of the line came to the throne at thirteen, a weak debauchee. Hung Wu, a plebeian and former Buddhist priest, headed a revolt, which resulted in the expulsion of the MONG-

gols and his elevation to the throne as the founder of the Ming Dynasty. He established his capital at Nanking and reigned thirty years. He named his grandson as his successor, but his son Yung-loh after five years seized the crown and moved the capital back to Peking in 1403. He promulgated a code of laws, framed under his direction, which is the basis of the existing system of today. In 1616 the Manchu Tartars invaded China and defeated the force sent against them. Rebellions followed in the provinces, by taking advantage of which and judiciously combining with one or other of the factions, the Manchus finally gained complete ascendancy and in 1644 Shun-che was proclaimed emperor and founder of the Tsing dynasty, which continued in power till the revolution of 1912. The whole empire was not reduced at once, but by a policy combining vigor in war with humane treatment of those who submitted, all opposition to the new dynasty was gradually overcome.

A strange exhibition of power was that by which the people were required to adopt the Tartar mode of shaving the front of the head and braiding the hair in a long cue. To introduce and enforce a fashion by command even of a despot, is something rarely attempted and much more rarely enforced and maintained. This mode of wearing the hair, now a distinctive mark of the Chinaman, thus appears to be a Manchu fashion forcibly imposed on the Chinese. It is said that many preferred to lose their heads rather than submit to this badge of subjection.

Kang-hi, son and successor of Shun-che, ascended the imperial throne in 1661 when only eight years old. He was a contemporary of Louis XIV, who became sovereign of France the same year. The reign of Kang-hi was long and illustrious, lasting sixty-one years. He extended the boundaries of the empire and devoted his energies with indefatigable diligence to the improvement of the system of government. His son Yung-ching succeeded him in 1722 and ruled sixteen years with great satisfaction to his subjects. He was succeeded by Kien-hung his son who ruled mainly in peace for sixty years. In his reign intercourse with western nations was established

and embassies were received from Russia, England and Holland.

The first three Manchu sovereigns thus ruled the empire with prudence and vigor for one hundred and thirty-five years, with few wars either at home or abroad, and none seriously threatening the integrity of the empire. Subsequent reigns have been less fortunate and rebellions and foreign wars have become more frequent. The government during the last century has been, for the most part, without vigor, and the universal law which ultimately brings ruin on every hereditary dynasty has just brought this to the end. The decay of despotic power does not necessarily indicate retrogression on the part of the nation but is often, nay usually, the forerunner of distinct advancement. Weakness on the part of the government always induces disorders, but these are often prompted by a desire for better conditions. In spite of all the vices and imperfections of its rulers, the peculiar civilization of the Chinese has been preserved and the almost incredible number of its people has continued to increase. The accounts of the military operations of its rulers and of rebel leaders, are calculated to convey erroneous impressions as to the military qualities and army service of the people in general. In western countries great wars have usually called out a very large proportion of the whole number of males of military age. Not so in China. The greatest army ever raised in the whole empire probably never exceeded one out of a hundred of the whole population. During the greatest wars and the most serious rebellions, trade, agriculture and manufacture, except in the immediate locality of the strife, have gone on without very serious interruption. Thus the character of the Chinese people and of Chinese civilization has been essentially unmilitary ever since the consolidation of the vast empire.

All authorities agree that the fundamental idea of the Chinese government was patriarchal. The emperor was regarded on the one hand as the son of Heaven, deriving his power directly from the Supreme Being, and on the other, as the father and mother of the people, responsible for their

conduct as well as their welfare. He was the supreme legislative, judicial and executive power. The theory of the origin of his power is not essentially different from that of other monarchs who rule by right divine. The Chinese, however, ingrafted a very important qualification on the doctrine. So long as the emperor ruled well, he was under the immediate protection of Heaven, but when he did ill it was an indication that the favor of Heaven had been withdrawn from him. The attributes of the princely man, taught in the classics as the words of Confucius, are much more lofty than can often be found on a throne. In the "Invariable Centre" it is said:

"It is only the man supremely holy, who by the faculty of knowing thoroughly and comprehending perfectly the primitive laws of living beings, is worthy of possessing supreme authority and commanding men, who by possessing a soul grand, firm, constant and imperturbable is capable of making justice and equity reign—who by his faculty of being always honest, simple, upright, grave and just, is capable of attracting respect and veneration—who by his faculty of being clothed with the ornaments of the mind and talents procured by assiduous study and by the enlightenment that is given by an exact investigation of the most hidden things and the most subtle principles, is capable of discerning with accuracy the true from the false and good from evil."

Mencius, who stands second only to Confucius in the estimation of the learned Chinese, said,

"When the prince is guilty of great errors the minister should reprove him: if after doing so again and again he does not listen, he ought to dethrone him and put another in his place."

In the *Ta-hio* or Grand Study the leading principles of government are thus stated by Confucius,

"The ancient princes who desired to develop in their states the luminous principle of reason that we have received from Heaven, endeavored first to govern well their kingdoms; those who desired to govern well their kingdoms, endeavored first to keep good order in their families; those who desired to keep good order in their families endeavored first to correct

themselves, those who desired to correct themselves endeavored first to give uprightness to their souls, those who desired to give uprightness to their souls endeavored first to render their intentions pure and sincere, those who desired to render their intentions pure and sincere endeavored to perfect as much as possible their moral knowledge and examine thoroughly their principles of action."

"All men the most elevated in rank as well as the most humble and obscure are equally bound to perform their duty. The correction and amelioration of one's self, or self-improvement is the basis of all progress, and of all moral development." Where is there anything better than this in any language? The Grand Study concludes,

"If those who govern states only think of amassing riches for their personal use, they will infallibly attract toward them depraved men. These depraved men will make the sovereign believe that they are good and virtuous, and these depraved men will govern the kingdom. But the administration of the unworthy ministers call down the chastisement of Heaven and excite the vengeance of the people. When matters have reached this point what ministers, were they ever so good and virtuous, could avert misfortune? Therefore those who govern kingdoms ought never to make their private fortune out of the public revenues, but their only riches should be justice and equity."

As the teachings of Christ have failed to make all of his professed followers in the west live according to the golden rule, so also the teachings of Confucius, studied in every school in the empire, and a profound knowledge of which is a prerequisite to appointment to office, have yet failed to make ideal rulers of men corrupt by nature, yet that his doctrines have wielded a powerful influence for good cannot be doubted. The recognition of the classical books as authority on moral and political questions operated as a limitation on the despotic powers of the emperor in much the same way that the unwritten British constitution limits the power of the king, lords and commons. The vast and complicated machinery of a government, ruling so many millions of peo-

ple, also necessitated system and order, which could not be maintained under a government responding solely to the arbitrary will of a despot. The checks and balances of the system, though designed mainly to restrain subordinate officers within the legitimate bounds of their authority, operated also to limit the powers of the emperor, in whom theoretically all power was vested.

Under the Manchu dynasty the succession to the throne was hereditary in the male line. The particular person was designated by the sovereign, but kept concealed until after his death. The person designated ceased to be known by his personal name from the time of his accession to the throne and was given a new name which is rather the name of his reign than of himself. The deceased emperor was given a posthumous name by which he is known in history. When by revolutions a new dynasty was established, it received a name which is continued till a new family accedes to power.

The imperial clan consisted of two classes. First the *Tsung-shih*, lineal descendants of Tien-Mings' father, Hien-tsu, who assumed the title of the emperor in 1616. Second the collateral branches including the children of his uncles and brothers who were collectively called Gioro. In the *Tsung-shih* there were twelve degrees of rank. They were for the most part shut out from useful employments and received small allowances. The titular nobility of the empire were not a rich and powerful body, but without power, land, wealth, or influence. The near kinsmen of the emperor received liberal allowances, while the lowest orders were given mere pittance. The imperial clan governed Manchuria and individuals were given such appointments in the empire as the emperor saw fit. Besides these there were five ancient orders of nobility, the titles of which cannot be accurately translated. The descendants of Confucius received especial honor.

The government of the Imperial court was under the general supervision of a board styled the *Nui-wu-fu* composed of a president and six assessors under whom were seven subordinate departments. These officers attended the emperor and empress at sacrifice and oversaw the households of the em-



peror's sons, as well as directed the care and supplies of the palace and imperial guard. The seven departments had duties distributed as follows: to one the supply of food and raiment, to the second, regulation of the emperor's body guard, the third regulated domestic etiquette and brought the inmates of the harem, led by the empress, to do homage to the emperor, the fourth selected ladies to fill the harem and collected the revenue from crown lands, the fifth attended to repairs of the palace and cleaning of the city streets for the use of the royal family, the sixth had charge of the emperor's herds and flocks and the seventh was a court for the punishment of crimes in and about the palace. The work of the imperial household was performed by about 2,000 eunuchs. There was but one empress, but the emperor was entitled to seven legal concubines and actually kept as many illegal ones as he pleased. Every third year he looked over the Manchu daughters and chose such as he liked for concubines. They were restored to liberty at twenty-five, unless they had borne children to the emperor.

The empress dowager was the most important subject in the palace and was paid special honor by the emperor. The government of the empire was carried on through the instrumentality of a very complex official system. First and closest to the emperor were two councils, the *Nui-Koh* or cabinet which consists of four principals and two assistants, half Manchus and half Chinese. Their duties were to "deliberate on the government of the empire, proclaim abroad the imperial pleasure, regulate the canons of state, together with the whole administration of the great balance of power, thus aiding the emperor in directing the affairs of state."

Subordinate to these were six grades of officers numbering in all over 200, more than half Manchus. Under the six chancellors were ten assistants and some of these were constantly absent in the provinces. The principal business of this cabinet was to receive imperial edicts and rescripts, present memorials, lay before the emperor the affairs of the empire, procure his instructions thereon and forward them to the proper office to be copied and promulgated. The papers in

matters for consideration were arranged and slips of suggested answers were attached when they were presented to the emperor for his decision. Daylight in the morning was the hour for commencing his work. Each document was first read by one of the Manchu *hioh-sz*, who then handed it to a Chinese *hioh-sz* who passed it to the emperor. By a stroke of the vermilion pencil he indicated the answer to be made. Appointments to office, removals, degradations, orders relating to taxes, the army, the provinces, etc., were thus rapidly made.

The members of this cabinet separately also had other duties to perform in connection with bureaus to which they were attached and in presiding on state occasions. They were also keepers of the twenty-five great seals of the government, each of which was of special design and for particular uses. Subordinate officers attached to the cabinet translated documents into the various languages found in the empire.

The *Kiun-ki-Chu*, council of state, was organized about 1730 and was for a time the most influential body under the emperor. The numbers of this council, usually about four, varied at the pleasure of the emperor by whom they were selected. Its duties were "to write imperial edicts and decisions, and determine such things as are of importance to the army and nation in order to aid the sovereign in regulating the machinery of affairs." They assembled in the palace between five and six in the morning. The emperor's commands were written down by them and, if public, transmitted to the inner council to be promulgated, but, if the matter required secrecy or haste, a dispatch was forthwith made up and sent to the Board of War to be forwarded. In all important trials or consultations, this council was called in and acted either separately or in connection with the appropriate court. Lists of officers entitled to promotion were kept by it and names to fill vacancies furnished the emperor.

The duties of these supreme councils were general, covered all departments of the government and served to connect the head of the empire with all subordinate bodies at the capital

and in the provinces. Under such a system, very much depended on the personal character of the emperor. The *King Poo* commonly called the Peking Gazette was compiled from the papers presented before the General Council. Every morning ample extracts from the papers decided upon by the emperor, including orders and rescripts, were placarded on boards in a court of the palace. Couriers were dispatched to all parts of the country with copies of these papers for local officials. Certain persons were also permitted to print these documents, but without comment or change, and circulate them to their customers. This was the Gazette and was simply a record of official acts. It was very generally read by educated people and kept them informed of the proceedings of the government. In the provinces, abridged editions were made for readers not able to take the complete one.

Under these two principal councils were the *Luh-Pu* or six boards, of ancient origin. At the head of each board were two presidents and four vice-presidents alternately Manchus and Chinese, and over those of Revenue, War and Punishments were also superintendents who were frequently members of the Cabinet. Sometimes the president of one board was superintendent of another. There were three subordinate grades of officers in each board and a great number of clerks for details. The organization of the departments was very complete and systematic.

(1) The *Li Pu* or Board of Civil Office, "has the government and direction of all the various officers in the civil service of the empire and thereby it assists the emperor to rule all the people" and their duties included "whatever appertains to the plans of selecting rank and gradation, to the rules determining degradation and promotion, to the ordinances granting investitures and rewards, and the laws for fixing schedules and furloughs that the civil service may be supplied." Civilians were presented to the emperor and all civil and literary offices were distributed by it, but the cabinet and General Council had advisory oversight of the high appointments. The board was divided into four bureaus. The first attended to distinctions, promotions and exchange of offices. The sec-

military affairs in the metropolis and provinces and to regulate the hinge of the state upon the reports received from the various departments regarding deprivation of, or appointment to Office, succession to, or creation of hereditary military rank: postal or courier arrangements, examination and selection of the deserving and accuracy of returns." The navy was also under this Board. The management of the post was under a special department and dispatches were transmitted by an efficient system. The board of war discharged its duties through four bureaus. It had no control over the household or city troops, nor of the Bannermen distributed throughout the empire.

(5) The *Hing Pu* or Board of Punishments, "has the government and direction of punishments throughout the empire for the purpose of aiding the sovereign in correcting all people. Whatever appertains to measures of applying the laws with leniency or severity, to the task of hearing evidence and giving decisions, to the right of granting pardons, reprieves or otherwise and to the rate of fines and interest are all reported to this Board, to aid in giving dignity to national manners." This Board had both civil and criminal jurisdiction. Its officers met with those of the Censorate and *Tali Sz* and the three formed the *San Foh Sz*, or Three Law Chambers, which decided on capital cases brought before them. In the autumn, these three united with members from six other courts, forming collectively a Court of Errors to review the decisions of provincial judges before reporting them to the emperor. They were required to conform their decisions to the laws and were not vested with any arbitrary powers. Subordinates of this Board recorded the emperor's decisions on appeals from the provinces at the autumnal sitting, when the entire list was presented for the emperor's final decision, and saw that these sentences were transmitted to the provincial judges. Another office superintended the publication of the code, with all the changes and additions. A third oversaw jails and jailers. A fourth received fines taken in commutation of punishment, and a fifth registered receipts and expenditures.

(6) The *Kung Pu* or Board of Works, "has the government and direction of the public works throughout the empire, together with the current expenses of the same, for the purpose of aiding the emperor to keep all the people in a state of repose. Whatever appertains to plans for buildings of wood or earth, to the forms of useful instruments, to the laws for stopping up or opening channels, and to the ordinances for constructing the mausolea and temples, are reported to this Board in order to perfect national works." The work of the bureaus in this department presents a singular combination of duties. One bureau supervised the condition of city walls, palaces, temples, altars and other public structures, sat as a prize office, furnished tents for the emperor's journeys, supplied timber for ships, and pottery and glassware for the court. Another attended to the manufacture of military stores and utensils used by the army, sorted the pearls from the fisheries, regulated weights and measures, furnished death warrants to governors and generals, and had charge of arsenals, stores, camp equipage and other things appertaining to the army. A third had charge of all water ways and dikes, repaired and dug canals, erected bridges, oversaw the banks of rivers by deputies stationed along their courses, built vessels of war, collected tolls, mended roads, dug sewers in Peking and cleaned out its gutters, preserved ice, made bookcases for public records and looked after the silks collected as taxes. The fourth attended chiefly to the condition of the imperial mausolea, the erection of the sepulchers and tablets of meritorious officers, buried at public expense, and the adornment of temples and palaces, and superintended all workmen employed by the Board. The mint was under the direction of two of the vice-presidents and the manufacture of gun powder was intrusted to two ministers.

The *Li Fan Yuen* commonly called the Colonial Office had the government and direction of the external foreigners, ordered their emoluments and honors, appointed their visits to court and regulated their punishments, in order to display the majesty and goodness of the state. This branch of gov-

ernment superintended all the tribes of Mongolia, Cobdo, Ili and Koko-nor. These are called "external foreigners," to distinguish them from the tribes of Sz-chuen and Formosa who are termed "internal foreigners." There are also the "internal barbarians, comprising the unsubdued mountaineers of Kweichan, and the "external barbarians" including the people of all foreign countries. The Colonial Office regulated the government of the nomads and restricted their wanderings. Its officers were all Manchus and Mongols. Besides the usual secretaries there were six departments. The first two had jurisdiction over the minor tribes of Mongolia, appointed the local officers, collected taxes, allotted lands to Chinese settlers, opened roads, paid salaries, arranged marriage retinues, visits to court, presents made by the princes and review of the troops. The third and fourth had similar but less effectual control over the princes, lamas and tribes of outer Mongolia. The fifth department directed the actions, restrained the powers, levied the taxes and ordered the tributary visits of the Mohammedan begs in the Thian-shan, Nari Lu. The sixth regulated the penal discipline of the tributary tribes. Salaries were paid the Mongolian princes according to an established scale. A *tsin wang* received \$2,600 and twenty-five pieces of silk per year, a *Kiun-wang* \$1,666 and fifteen pieces of silk and so down to the lowest in rank who got \$133 and four pieces of silk. The organization of these nomadic tribes partakes of both the feudal and tribal system. The Chinese policy was to reduce the power of the chiefs and make the people independent owners and cultivators of the soil.

The *Tu-chah Yuen* or Censorate, "All examining Court" was entrusted with the "care of manners and customs, the investigation of all public offices within and without the capital, the discrimination between the good and bad performance of their business, and between the depravity and uprightness of the officers employed in them; taking the lead of other censors and uttering each his sentiments and reproofs, in order to cause officers to be diligent in attention to their daily duties and to render the government of the empire stable."

The Censorate when joined with the Board of Punishments, and Court of Appeals, formed a high court for the revision of criminal cases and appeals from the provinces; and in connection with the Six Boards and the court of Representation and Appeal, made one of the *Kin King* or "Nine Courts" which deliberated on important affairs of state: The officers were two censors and four deputy censors, besides whom the governors, lieutenant governors and governors of rivers and inland navigation were ex-officio deputy censors. A class of censors was placed over each of the Six Boards whose duties were to supervise all their acts, to receive all public documents from the Cabinet and, after classifying them, transmit them to the several courts to which they belonged, and to make a semi-monthly examination of the papers entered on the archives of each court. All criminal cases in the provinces were under the oversight of the censors at the capital, and also the department which superintended the affairs of the metropolis, revised its municipal acts, settled the quarrels, and repressed the crimes of its inhabitants. Theoretically the Censors had the right and rested under the duty of expressing their opinions and criticising all official dereliction coming under their observation, from the emperor down, but to do so required exceptional courage and uprightness, seldom found among politicians anywhere and especially rare under a despotism. Instances of righteous and fearless performance of this duty are not wanting however. Sung, a censor, sent in a memorial remonstrating with the Emperor Kiaking upon his attachment to play actors and strong drink, which degraded him in the eyes of the people and disabled him from performing his duties. The Emperor highly irritated called him to his presence and on his confessing the authorship of the memorial asked him what punishment he deserved. He answered "quartering"; being told to select some other he said "Let me be beheaded" and on the third command chose to be strangled. He was ordered to retire and the next day the Emperor appointed him governor of Ili, thus removing him from the capital. Another censor, during the Tang dynasty, when the emperor desired to in-

spect the archives of the historical office to learn what had been recorded concerning him, under the excuse that he wanted to know his faults so that he might correct them, answered "It is true your Majesty has committed a number of errors, and it has been the painful duty of our employment to take notice of them; a duty which further obliges us to inform posterity of the conversation which your Majesty has this day very improperly held with us." The usual mode of advising the Emperor was by a written remonstrance or memorial. Many of these were inserted in the Peking Gazette for public information. The *Tung-ching Sz*, or Court of Transmission, consisted of six officers, who received memorials from the provincial authorities and appeals from their judgments by the people, which they presented to the Cabinet. Attached to this court was an office for attending at the palace gate, to await the beating of a drum, which, according to ancient custom, was placed there that suitors by striking it might obtain a hearing. This was also the channel through which the people could appeal directly to the Emperor, and instances occur where men and women traveled from remote provinces to present their petitions to the "one man."

The *Ta-li Sz* or Court of Judicature and Revision had the duty of supervising all the criminal courts in the empire and formed the nearest approach to a Supreme Court of any in the government. When the crime involved life, this and the preceding united with the censors to form one court, and if the judges were not unanimous in their decisions they must report their reasons to the Emperor to decide the case. The *Hanlin Yuen* or Imperial Academy was entrusted "with the duty of drawing up governmental documents, histories and other works; its chief officers take the lead of the various classes, and excite their exertions to advance in learning in order to prepare them for employments and fit them for attending upon the sovereign." Its chief officers were two presidents or senior members who attended on the Emperor, superintended the studies of graduates and furnished semi-annual lists of persons to be speakers at the celestial feasts, where the essays of the Emperor were translated from or



into Manchu and read before him. Subordinate to the two seniors were four grades of officers, five in each grade, with an unlimited number of senior graduates, each forming a sort of college, whose duties were to prepare all works published under governmental sanction. Subordinate to the *Hanlin Yuen* was an office consisting of twenty two select members, who in rotation attended on the Emperor and recorded his words and actions. There was also an additional office for the preparation of national histories. The members of the *Hanlin*, being at the head of the literary graduates, formed the body from which most important offices were filled.

There was also the *Kwoh-tsz Kien* or National College for teaching graduates of the lower degrees and the *Kin Tien* or Imperial Astronomical College, whose duties were defined "to direct the ascertainment of times and the movements of the heavenly bodies in order to attain conformity with the celestial periods and to regulate the notation of time among men; all things relating to divination and the selection of days are under its charge." The preparation of the almanac, designating the lucky and unlucky days and other absurdities inserted in it, were under their charge.

The various departments of the general government were so arranged as to hold a check on each other. There were two presidents over each board, not merely to assist, but to watch each other and oversee the vice-presidents. The president of one board was sometimes the vice-president of another and by means of the censors brought under the cognizance of several officers, whose mutual jealousies and ambitions placed some check on each other and afforded some guarantee of fidelity.

Having given thus a general view of the organization of the government at the capital we proceed to a consideration of the government of the provinces. The highest officers in the provinces were the *tsung-tuh*, viceroys, and the *futai* or *fuyuen*, governors. The *tsung-tuh* ruled over two provinces or else filled two high offices in one, while the *futai* was over one province, either independent or subordinate to a *tsung-tuh*. The viceroy stood as the representative of the Emperor

in the territory. The *futai* filled a similar capacity but inferior to the *tsung-tuh* when there was one. The departments of the civil government were five *viz.*, administration, literary, gabel, commissariat, and excise, the first being also divided into the territorial and financial and the judicial branches. At the head of the first branch was the *pu-ching sz*, usually called the treasurer, over the second the *ngan-chah sz* or criminal judge, presided. These two officers acted together in important business and the trial of important cases. The literary department was under the direction of an officer, selected by the Imperial Academy called a *hioh-ching*. The gabel and commissariat were usually supervised by officers called *tao* or *tao-tai*, sometimes termed intendants of circuit, who had other functions also. The excise was under *Kientuh* or superintendents. The collection of the revenue being difficult, was mainly entrusted to local magistrates. The military government of a province included both sea and land forces. It was under a *tituh* or commander-in-chief of which rank there were sixteen. In five-provinces the *futai* was commander-in-chief and in Kan-suh there were two. Above the *tituh*, in point of rank but not of power, were garrisons of Manchu Bannermen under a *tsiang-kuin* or general, appointed and directed by the captains general in Peking. The three officers *tsungtuh*, *futai* and *tsiang kuin*, if there were one, formed a supreme council and united in deliberating on a measure, calling in the subordinate in whose department it belonged. In these courts civilians took precedence of military officers. The authority of the viceroy extended to life and death, to making temporary appointments to fill vacant offices in the province, to ordering troops to any part of it and taking such measures as were necessary for the security and peace of the province under him. The *futai* also had power of life and death and jurisdiction of appeals in criminal cases and oversaw the conduct of civilians under him.

Next in rank to the *pu-ching sz*, treasurer, and *ngan-chah sz*, criminal judge, who always resided at the provincial capital, were the intendants of circuit who were located in the circuits consisting of two or three prefectures united for this

purpose. They were deputies of the two highest functionaries, whom they were appointed to assist and relieve in the discharge of their duties. Some were appointed to supervise the proceedings of the prefects and district magistrates, others stationed at important posts to protect them, and those connected with foreign trade at open ports had no territorial jurisdiction. Below these were the prefects or chief magistrates of departments called *chifu*, *chichau*, and *ting tungchi* according as they were placed over *fu*, *chau* or *ting* departments. These officers received their orders through the intendants, were responsible for their full execution and expected to know all that took place in their jurisdictions.

Departments were divided into *ting*, *chau* and *hien* having each their separate officers who reported to the head of the department over them. They were called *ting chi*, *chi-chau* and *chi-hien*.

The parts of districts called *sz* were placed under the control of *siun-kien*, circuit restrainers or hundreders who formed the last in the regular series of descending rank. The prefects sometimes had deputies directly under them, as the governor had his intendants, when the importance of their departments required it. Besides these there were many other deputies and assistants charged with particular duties in the collection of taxes, oversight of the police, care of water ways, etc. Besides the officers above mentioned there were a great number of clerks, registrars and secretaries connected with every officer of high rank and a multitude of petty subordinates, with some duties to perform, but largely kept to emphasize the importance of their superiors. All above the *chi-hien* were allowed private secretaries. The *ngan-chah-sz* had jailers under their control, as had also the more important prefects.

The *hioh-ching* or literary chancellor, in rank but not in power, stood next the governor. Under him were head teachers of different degrees of authority, residing in the chief towns of the departments and districts. These had some degree of supervision over the studies of students and the colleges in the chief towns. The chancellor had exclusive

authority to confer the lower literary degrees, and he made an annual circuit of the province for that purpose, holding examinations in the chief towns of each department to which all students residing within its limits could come.

The gabel or salt department was under the control of a special officer called a "commissioner for the transport of salt." Above these commissioners were eight directors of the salt monopoly, stationed at the depots in Chi-li and Shang-tung, who also performed other duties. The revenue department was unusually large, owing to the collection of so much in produce and merchandise. The transportation of grain along the Yangtsz River was under the control of a *tsung tuh*, who oversaw the disposal and directed the collection of it in eight of the provinces adjacent to the river. In each of twelve provinces there was a *liang-chu tao* or commissioner to collect grain and in the other six the duty was performed by the *pu-ching sz*. The supervision of the subordinates of this department rested with the prefects and district magistrates. The number of provincial officers of the different grades above referred to were given as follows:

- 8 Governors General or viceroys, six governing two provinces each.
- 15 Governors.
- 19 Commissioners of Finance.
- 18 Commissioners of Justice.
- 4 Directors of Salt Gabel.
- 9 Collectors.
- 13 Commissioners of Grain.
- 64 Intendants of Circuit.
- 182 Prefects.
- 68 Prefects of Inferior Departments.
- 18 Independent Subprefects.
- 180 Dependent Subprefects.
- 139 Deputy Subprefects.
- 141 District Magistrates of the Fifth Class.
- 1232 District Magistrates of the Seventh Class.<sup>1</sup>

<sup>1</sup>The Middle Kingdom.

The military section of the provincial government was under a *ti-tuh* or general who resided at a central post and in conjunction with the viceroy and governor directed the movement of troops. The native troops in each province were distinct from the Manchu and were divided somewhat after the plan of the ancient Roman legion, cohort, maniple and century, over each of which were appropriate officers. The governor, major general, and Banner commandant had commands independent of each other. Naval officers had the same names as those in the army and changes and promotions were made from one arm of the service to the other. The general officers had power to send special messengers invested with full powers to every part of their jurisdiction.

The Emperor sent commissioners, called *Kiu-chai*, to all parts of the empire, ostensibly on particular business, but required to take general observations of what was going on. In considering the extent of the jurisdiction and vast power reposed in these various officers, it must be borne in mind that each viceroy had under him more people than are to be found in any but the greatest countries of Europe, that he stood as the representative of the Emperor and of the supreme legislative, executive, and judicial power, and that he constantly exercised, in person and through his subordinates, more or less of all these functions. The Emperor, with his great army of assistants at Peking, watched over and directed not only the affairs of the eighteen home provinces, but also the outer dependencies. It is exceedingly difficult for one, accustomed only to study western governments and laws, to gain a clear conception of this vast governmental system, which owed none of its principles, forms or policies to the suggestion of other nations. The government like the people was indigenous and to be understood must be viewed in connection with its environments.

No officer was allowed to marry in the jurisdiction under him nor to own land in it, nor have a near relative holding office under him; and one was seldom continued in the same station for more than three years. Manchus and Chinese were mingled together and were expected to watch and mutually

check each other. Members of the imperial clan were required to attend the meetings of the boards at the capital and observe and report what they deemed amiss to the Emperor. A triennial catalogue of merits and demerits of all officials in the empire was made out by the Board of Civil Office and submitted to the Emperor. This catalogue was made up from reports, made by all provincial officers on the conduct of those under them, forwarded by the governors. The points were arranged under six heads, diligence, efficiency, superficiality, talents, superannuated and deceased. On this basis the officers were advanced or degraded. Officers were required to accuse themselves, when guilty of crime committed by either themselves or their subordinates, and request punishment. The names and standing of all officers were published quarterly by permission of the government in the Red Book, in four twelve-mo. volumes, and officers of the army and Banner-men in two others. This publication was begun about 1580 and gives the name, native province, race, title and salary of the officers. The record of most officials is one of ups and downs, very few being able to steadily advance. Except the preferences given to the imperial clan, Chinese officials came up from the great multitude. No matter how humble his birth, any subject was eligible to the highest office under the emperor. Theoretically education was the test of qualification. Practically the favor of the appointing power was of first importance and personal influence often outweighed merit.

The orders of the court were usually transmitted in manuscript. General proclamations were printed on yellow paper in the Manchu and Chinese languages with a border of dragons. Orders and regulations issued by governors and other principal officers to the people of the provinces were also published. Standing laws and local regulations were often carved on tablets of black marble and placed in the streets where all could read them. Commands of the government were usually printed in large characters and copies were posted at the doors of the offices and in public places in the streets, with the seal of the officer authenticating them. Important edicts were also often printed in pamphlet form.

Persons eligible to office were divided into nine literary ranks, the lowest including village magistrates, deputy treasurers, jailers, etc. Policemen, local interpreters, clerks and attendants were not regarded as of any rank and were mostly residents of the locality where employed. Titular rank was sold by the government, but this did not open the road to official position, though offices were purchased corruptly and instances occurred where offices were sold by the government. The principal advantage of the honorary title was that it saved the possessor from the bamboo, where others would suffer.

Besides the officials holding by appointment under the Emperor, there were village headmen, chosen by the people themselves, who had more or less important duties to perform according to circumstances. They decided petty disputes, supervised local police, regulated festivals, markets and streets, collected taxes, etc. They were under surveillance of their supervisors and an appeal lay from the headmen to the district magistrate. Meetings of the headmen of many villages to consult on matters of mutual interest were sometimes held and they held something of a check, as representatives of the people, on the oppressions and extortions of the higher officials and their menial dependents. The existence of clans, which is most marked in the southern provinces, is a source of much disorder and crime. There are about four hundred clans in the empire, many of which are scattered throughout different parts, thus in effect greatly multiplying the number. The clans are most active and turbulent in the southern provinces, especially Kwang tung and Fukien. By uniting to shield members guilty of crime, great difficulties are often interposed to the administration of justice. False witnesses and sometimes hired substitutes, confessing crime to shield the guilty, are produced and paid by the clan. In some places the clan becomes little more than a nest of bandits and even develops into the terrible *Kouan Kouen* of whom the Abbé Huc says, "To give and receive wounds with composure; to kill others with the most perfect coolness and to have no fear for yourself, this is the sublime ideal of the

Kouan Kouen." In the cities the householders on each street are required to unite in policing the street and maintaining order, and for this purpose they select a headman who has supervision. The citizens also form voluntary guilds to further mutual interests, each having its assembly hall, where they assemble for about the same purposes as do European guilds. Popular assemblies are sometimes held on a more comprehensive scale and in Canton there is a building, called the Free Discussion Hall, where political matters are openly discussed and the gatherings often wield great influence. Secret societies, some of them ramifying throughout a large part of the empire, are numerous, though the policy of the government was to suppress them. City charters appear to have been a thing unknown and the people of cities were subject to substantially the same governmental system that prevailed throughout the empire. China is peculiarly free from class distinctions. There is no hereditary aristocracy corresponding to that of Europe, the clan of the Emperor and descendants of Confucius alone receiving substantial recognition.

Caste in the sense in which it exists in India is unknown. There are prejudices against members of certain aboriginal tribes in the interior and boat people on the coast. Aliens, slaves, criminals, executioners, police runners, actors, jugglers, beggars, vagrants and vile persons, were not eligible for the literary examinations, nor their descendants until for three generations they had followed some useful employment. The democratic part of the system was in the village organization, which was thoroughly so. All citizens were electors and eligible to office. The village collectively was responsible for the taxes and the headmen, usually the elders, were generally of high character and worthy of the confidence reposed in them. These village organizations included considerable numbers of people, in some instances several thousands. In the election of headmen, the people divided by clans, rather than parties representing different principles, and most of the wrongs attributed to these local governments are chargeable to clan enmity.



Slavery exists in China, but only to a very limited degree as to males, the numbers of whom are so few as to be hardly appreciable. Women are sold, but usually for concubines. Polygamy is allowed, but not much practiced except by the rich. The chief fundamental defect in the organization of Chinese society unquestionably is the low estimation in which women are held and their oppression by the males. The wife is the slave of her husband, with whom she is not permitted to eat, or attend public worship. The birth of a son is followed by great rejoicing but the birth of a daughter is considered a calamity. The girl is the servant of her brothers as well as her parents, and until recent times in obedience to the merciless demands of fashion, was required at an early age, to endure the barbarous process of foot binding, by which she was rendered a cripple for life. This seems to have been even more the work of the women than of the men, the mothers like those of western lands prizing above all things the appearance which fashion demanded. The respect for parents and for age, so strongly inculcated in all the teachings, tends in some measure to alleviate the condition of women in the closing years of life. The fact, however, is abundantly established that the Chinese, as a nation, deny absolutely the equality of the sexes and remain blind to the blighting influence on society, and on each succeeding generation, which the degradation and ill treatment of mothers have. Though Chinese philosophers have perceived and taught the value of home instruction and of the mother's influence on her offspring, they have utterly failed to carry the lesson to its logical conclusion and enjoin such care, education and considerate treatment of the mother as will enable her to properly discharge these duties. Herein lies the greatest defect in the social system of the empire.

A general survey of the workings of the Chinese government will show that it drew far less from the people by taxation than any other great government, population considered, and the number of officials employed was very much less. The complaints of the people were not so much against regular taxation as the extortion of petty officials and hangers on

of the courts. It was the corruption and extortions of officials high and low that bore heavily on those who found need of resorting to governmental protection or were called on to answer for their doings.

China is the least military of all the great governments, except the United States of America. Its standing army includes less than one million men of whom very many are but nominal soldiers. This is less than one out of four hundred of its population. Any first class European power, Great Britain excepted, can muster a larger force than this of trained soldiers, though not all in actual service. Chinese soldiers are generally regarded with contempt by Europeans and while, as individuals, the Chinese frequently exhibit as much physical courage as Europeans, their character, habits and traditions are essentially unmilitary.

In its government we find that the primary structure was democratic in character, resembling the tribal organizations of primitive people, which usually accord some degree of distinction and respect to the elders. At the head of the vast official machine was the Emperor, theoretically the great patriarch of the whole, vested with full power, which he was expected to exercise as a father, according to established principles and customs and for the good of his immense family. The theory of the government did not admit of anything like a clear separation of it into legislative, executive and judicial departments, nevertheless these functions were in practice separately exercised to a considerable extent. The principles declared in the classical books require that the government be rather one of laws than of the arbitrary will of men, and the Book of Rites indicates the relations of the various grades of officials to each other and to the people. However arbitrarily they may have exercised their powers in practice, the army of officials who administered the government had no commission to rule according to their pleasure. Their powers and duties were well marked out and a well devised and constant system of surveillance and espionage to keep them to their duties was maintained.

China has long had its code of written laws termed the

penal code, though it relates to what are called civil cases with us as well as to criminal ones. An extended summary of this code as it existed a century ago, before western influences had been sufficient to produce any material effect on Chinese sentiments, will be found in the Appendix.

Steamboats, railroads, and telegraphs have reduced the distance between China and the west; other western inventions and scientific teachings have introduced new ideas into the ancient realm; battleships and great guns have demonstrated the destructive forces of the "foreign devils," and China can no longer be a world to itself. The new learning of the west has been acquired by many Chinese scholars, and books and periodicals of all kinds have disseminated it throughout the empire. Though Chinese statesmen and merchants came in contact with foreign people ever since the opening of trade between Europe and India and China but little effect on the multitude was produced until very recent times. Kwang-su, an infant, ascended the throne in January, 1875 with the dowager empresses Tsz'e Hsi and Tsz'e An as guardians. Tsz'e An died in 1881 and from that time till 1898 the sovereign power was wielded by Tsz'e Hsi. Kwang-su then assumed authority for a brief period but was deposed by the dowager who resumed authority. The war with Japan, the acquisition of the Philippine Islands by the United States, the construction of the Siberian railway by Russia, the boxer uprising in 1900 and the intervention of the foreign powers and the war between Japan and Russia, combined with increasing knowledge of western arts, inventions and ideas to produce a public sentiment among the educated classes in favor of sweeping reforms in governmental methods. In 1905 an Imperial Commission to study the administrative systems of other countries was appointed with a view to the possible establishment of representative government in China. This Commission visited Japan, America and Europe. On September 1, 1906 an edict for the future establishment of a parliamentary form of government at no fixed date was promulgated. August 27, 1908 a decree issued in the name of Kwang-su announced the convocation of a parliament in

the ninth year from that date. Reform of the educational system to include modern sciences as well as the Chinese classics began in 1902. Kwang-su died in November, 1908 and his death was followed by that of the dowager empress on the fifteenth of that month. Pu-Yi, the infant nephew of Kwang-su, succeeded to the throne. On October 14, 1909, Provincial Assemblies elected in the provinces met. In February, 1910 a decree approving schemes of the Commission for constitutional reforms with local representative governments in the prefectures and departments and reforms of the judiciary was promulgated. The appointment in May 1911 of an Executive Council composed of eight royal princes, four Manchus and only five Chinese, and the assertion by the regent that "the right to name officials belongs to the Emperor alone" and the manifestation of reactionary tendencies by the court, precipitated a revolution which resulted in the abdication of the little Pu-Yi and the dowager Empress on February 12, 1912 and the establishment of the Republic of China. While the change from the theory of an absolute paternal despotism to a republic seems so very great, China was not wholly unprepared for it. The indispensable prerequisite of a written language read and comprehended by a large part of the people, coupled with general education in the principles of government as declared in the classical books and long familiarity with local self-government in the villages and communities, and the meetings of the head men of a number of villages for consultation and concerted action had prepared the people in some measure for republican institutions.

Nothing is more common than to regard with contempt that which is not understood. Europeans and Americans generally look upon Chinese civilization as containing nothing worthy of adoption or even of serious consideration. The Chinese are now manifesting a willingness to learn from the western barbarians, whom they so long despised.

The prominent, glaring faults of the Chinese are their treatment of women, slavery, polygamy, binding the feet, torture to extort confessions of crime, and cruel punishments. These are so repugnant to Europeans that it is often assumed

that no great virtues can be associated with conduct so vicious.

Europe viewed from the standpoint of China, exhibits many comparatively petty states, constantly burdened with the support of great armies and often warring with each other, speaking different languages as do the inferior tribes within the Chinese empire. They are shocked at the disrespect exhibited toward parents in America, even more than in Europe; at the want of respect for one another indicated by the absence of ceremonious greetings, at the absurd fashions in clothing, the absurd burdens of woollens and linens in summer worn by the men, and the indecent and harmful exposure of their persons by the women at great functions in winter; at the multitudes of idle rich and idle poor found everywhere; at the injustice and bad policy of laws which fix the fines of rich and poor at the same sum of money; at the want of discrimination in punishments and the actual exemption of the nobility in Europe and the very rich in America from accountability for their conduct, and many other European and American peculiarities.

To the American or European who considers the Chinese Penal Code, probably the first matter that will challenge his attention is the want of a civil code. Europeans and Americans from the earliest historical times have classified their causes in court as civil and criminal, and this division is regarded as natural and indispensable. Is it really either natural or indispensable? The fundamental idea of the Chinese was that the Emperor occupied the relation of a father to all the people; that the duty rested on him to restrain all his multitude of children from doing wrong, and also to compel them to do right. How should this be done? As a father would enforce obedience and right conduct by his children. For petty offences and omissions of duty a mild whipping; for those more serious more strokes. When whipping appeared inadequate, banishment, and for the most heinous crimes, death. The Chinese deem punishment due to him who defrauds his neighbor as well as to him who steals from him; to him who unlawfully detains another's property as well as to him who stealthily takes it. To fail to pay a debt or perform a contract or duty is a misdeed to be corrected with the

bamboo. Misdeeds are graded and classified in the Penal Code of China far more logically and naturally than in Europe or America. The turpitude of the misdeed depends on the value of the property of another which has been unlawfully taken, retained or misappropriated, the nature of the injury to the person, the intent of the wrongdoer, and the relationship of the parties. In Europe and America an arbitrary line is drawn between crimes and civil wrongs. Many frauds and misdeeds of the greatest magnitude are not classed as crimes, and some really meritorious acts are punished. Larceny and embezzlement, which, in the nature of things have many grades of moral turpitude, are ordinarily divided arbitrarily into two classes based on value or kind of property. The Chinese make a much more logical classification and punish petty pilfering with but a few blows, and larceny of a large sum with death. To steal food to satisfy hunger is but a slight fault, to deliberately take a large sum of money or property of great value from another exhibits moral turpitude and is punished accordingly. It is regarded as a much more serious offense for a son to strike his father or mother than a stranger. It is a less offense for a member of a family to appropriate a part of the property of another member of it to his use than to take from a stranger. In dealing with principals and accessories in crime, the one who plans and directs is regarded as the principal, whether he actually takes part in the perpetration of the offense or not. This also is more logical than the rules of the common law of England and the United States.

In the infliction of punishment regard is had to the ability of the culprit to endure it. Both the old and the young are treated more leniently than the strong mature men. Women are allowed special consideration in this particular and retain the upper garment while a man is required to strip. Where commutation is allowed in lieu of the bamboo, the amount of the payment depends on the ability of the culprit to pay, and the rich and powerful must pay ten times as much as the poor and humble. When it is considered that in the west the rich nearly always escape, and when convicted and actually

punished are treated with far more consideration than the poor, the superiority of the Chinese code in this particular appears very marked.

While the laws with reference to marriage and divorce do not commend themselves to the Western mind, in one particular the divorce law is superior to ours. It recognizes misconduct as a ground for a divorce, but it also recognizes good conduct as a defence. Clearly, good conduct should be weighed as well as bad. Western people are disposed to ridicule Chinese regulations with reference to mourning, yet these accord perfectly with the central idea of paternal authority on which both the governmental and domestic systems were based. Doubtless the profound respect for parents manifested by the Chinese is largely due to the law relating to mourning, which makes the loss of father or mother a calamity, not merely in and of itself, but also by reason of the legal consequences which follow. In the West the heir of a great estate is far too often forgetful of his loss and over conscious of his gain.

In no other country is industry and thrift so general, and nowhere else is there so small a percentage of idlers living on the industry of others. This also is due in some measure at least to the policy of the law. Speculators are not allowed to hold great tracts of land without use. The owner must make his land productive and the village authorities must see that he does so.

Acts of Parliament covering limited fields and the recognized methods of carrying on public affairs constitute the so-called British constitution. In China the classical books defined the relations of the people and their rulers, and the official system through which the people were governed, with its explicit rules and the elaborate penal code, constituted their constitution. It is true that they had not the theoretical separation of executive, legislative and judicial departments, but on the other hand they had a more complete system of changing officials from place to place and having each watch and report on the conduct of others than can be found in any other country.

Though classed as a despotism by Europeans, China had encouraged learning through many centuries, while European kings discouraged it. In theory education and merit were the sole means of gaining official station and of retaining it when once acquired. Knowledge of the laws was exacted of all officials. Those who wielded the powers of government were not above the law, but themselves liable to punishment for its violation. A western judge is not liable to punishment for a wrong judgment, but in China all the court officials as well as the judge were subject to punishment for disregarding the law.

Until very recent times the rulers of Europe refused to give information to their subjects of the doings at their courts. The Emperors of China have long made public their official acts, and through the Peking Gazette all might keep informed of the acts and orders of the government.

The people of China have from a very early day enjoyed, not only a large measure of liberty of individual action, but of association and combination as well. The Empire includes all varieties of climate, soil, and productions. Perpetual winter reigns on the peaks of the Thian Shan and Kuen Lun, while the most southern provinces extend into the tropics. The people have never relied on any other country for the necessities or even luxuries of life. Foreign commerce has always been limited, yet the internal commerce of China is and long has been second to that of no country in the world. It has never been the policy of the rulers of China to interfere with the useful activities of the people, nor has the government for any long period attempted to supervise or direct them. Industry, thrift and the performance of obligations have been enjoined and enforced. The average Chinaman, whether at home or abroad, looks to China as the only really civilized country in the world, and the best place on Earth in which to live. Is it quite certain that he is altogether wrong?

It is easy to point out moral blemishes in the Chinese. It is equally easy to see them in Europeans and Americans. It is not easy to judge justly of the relative merits and demerits of the different people or of their institutions and laws.



China combined democratic local self-government under written laws with an autocratic central power acting through a most carefully devised arrangement of bureaus and departments designed to afford mutual checks on each other. Under this system one-fourth of all the people on the globe lived. They have known less of the horrors of war than any other equal number of people on Earth no matter how selected. They are subject to less annoying restrictions in the transaction of their daily business than the people of most states of Europe. The morality inculcated by their classical books and the Buddhist teachers is as pure and lofty as that found in the teachings followed by the people of the West.

As the study of a foreign language is one of the best means for learning ones mother tongue, so the study of the code of laws most dissimilar to that of our own country is an excellent method of finding out the defects and absurdities of the system to which the student is accustomed. The extreme dissimilarity of the institutions of China and those of Europe and America give especial value to the study of its ancient moral teachings, laws, customs and government.

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## CHAPTER XI

### JAPAN

So far as the history of Japan has come down to us it is the history of a single dynasty. No other country is now ruled by a family so long in power, to speak more accurately, theoretically in power. Starting with Jimmu Tenno, whose reign commenced about 660 B.C., the mikados have traced their descent from him and have been recognized as the sovereigns of the empire. That there were people on the island prior to his time and that many events of great historic interest transpired long before, do not admit of doubt, but, as the Japanese had no written records till the sixth century of our era, even the history of the early rulers is founded on tradition and starts with the supernatural and mythical. According to the legend, Ningyo-no-Mikoto, grandson of the sun goddess Amaterasu-o-mi-Kami, settled in the south part of the island of Kiushiu. His son, Jimmu Tenno, proceeded northward and landed on the principal island from the Bay of Ozaka. Thence he advanced into the country, subduing the neighboring provinces, and established his residence near the town of Nara in the year 660 B.C. It is surmised that the Ainos, now found only in the extreme north of the empire, were the aborigines, and that Jimmu Tenno was the leader of a superior race, which invaded the country from the south. The character of the inhabitants of the island at the date of his advent must, however, remain a matter of conjecture rather than of established fact until some record not yet made public is discovered.

The fundamental theory of the government, promulgated and maintained through all the generations, is that of a ruler divinely descended and commissioned to govern the people according to his sovereign will. Jimmu Tenno is credited with introducing the culture of cereals, hemp, garlic and ginger.

His early successors would seem to have had exceptionally long reigns, as the tenth Mikado, Sujin Tenno, ruled from 97 to 30 B.C. This would allow more than an average of sixty years to each mikado. Though some progress was made in agriculture and the authority of the Mikado was so extended as to extort tribute from Corea in 32 B.C., a low state of civilization may be inferred from the existence of a custom by which on the death of the Mikado or one of his near relatives his servants were buried alive with him. A law prohibiting this custom was promulgated in the year A.D. 2. Such a custom implies the prevalence of the most unmitigated slavery and abject submission to despotic power. It is evident that the dominion of the early rulers did not extend over all the islands, for not until the reign of Kuko Tenno, A.D. 71 to 130, was the great Kuwanto subdued, and an invasion from Kiushiu caused the subjugation of that island, which, though the landing place of the father of the first Mikado, would seem never to have been subject to his immediate successors. Though Japanese writers seem to accept the accounts of the administrations of the early rulers as historic facts, there are so many elements of improbability connected with them that they hardly afford a safe basis for deductions. Little is known of the number of people on the islands or their condition prior to the introduction of letters. It seems reasonably certain however, that the early mikados ruled over a rather sparsely settled country, and that their dominions were confined to a portion only of the islands. Despotism of the most absolute character is the earliest form of government of which an account is preserved. Though the Japanese maintain that the abolition of the shogunate and the restoration of power to the Mikado but reinstate the reigning house in the authority which of right it always had, the actual power has in the course of centuries not merely passed into other hands, who have administered it for long periods, but the system of government and the organization of society have undergone radical changes. In studying these changes let us bear in mind that we are dealing with a people whose homogeneity has continued without material change for more than 2,000 years.

There was not at any time after Jimmu an invading conqueror, nor is any account preserved of the influx of a servile race. The present population of the islands have descended from its early inhabitants with but slight and occasional intermixture of foreign blood, never enough to materially affect the great mass. Whence the early ideas of government were derived is unimportant. They were essentially despotic.

In 202 the Empress Jingu Kogo invaded Corea and placed it under tribute. This was followed by an embassy from China and the introduction into Japan of the teachings of Buddha and Confucius, and the language, literature and laws of the Chinese. It was several centuries however before this produced marked effect, for it is said that the introduction of Buddhism is generally regarded as dating from 522, and that the Japanese had no written language till that century. The king of Kudara in Corea sent the Mikado bonzes, statues of Buddha, prayer books and other religious paraphernalia. As he still adhered to the Shinto religion he asked for apothecaries, soothsayers and almanac makers instead, for which he exchanged munitions of war.

About the year 600 the Empress Suiko introduced into her court the manners of the Chinese, with whom at that time there was considerable intercourse. How great a change this effected cannot be definitely stated, but it did not materially alter the form or character of the government. During her reign the Buddhist religion gained adherents rapidly, and its influence tended to improve society and bring about peaceful conditions. The early practice of burying living slaves and wives with the bodies of their deceased lords seems to have continued, notwithstanding the early prohibition of it, until the reign of the thirtieth Mikado, when a strict injunction against it was issued.

In the time of the thirty-eighth emperor, the three chief offices of *Sa-Dai-Jin*, *U-Dai-Jin* and *Nai-Dai-Jin* were created. Tenji also established the office of *Dai-Jo-Dai-Jin* (great minister of the great government), and conferred it on his eldest son. His friend Nakatomi he made *Nai-Dai-Jin* and allowed him to adopt the family name of Fujiwara. This family

played a most important part in the rulership of the empire for several centuries. Prior to this time, except during periods of internal strife involving the succession, the government was administered directly by the Mikado. He led the armies of peasant soldiers, who disbanded and returned to their peaceful callings when war was over. On the introduction of Chinese customs a court nobility grew up around the mikado, which in time deprived him of all real authority. In the early centuries and down to the time of Tenji Tenno in the last half of the sixth century there were no considerable cities, and the Mikados shifted their residence though always within the Gakmai or home province.

Kuwammu Tenno, fiftieth Mikado, established his residence at Kioto, which remained the capitol of the empire till recent times. He caused many improvements to be made, and constructed canals and dams to regulate the water courses, built temples and palaces, established schools and encouraged the Buddhist teachers. The relation of the Fujiwara to the Mikado and the important special privileges they enjoyed afforded them the means of greatly increasing their power. The office of *Kuwambaku*, or regent, was made hereditary in the Fujiwaras, and from the daughters of the house the Mikados took their wives. With the advent of weak princes early in the ninth century the practice commenced of inducing or forcing the Mikado to abdicate in favor of an infant member of the family and thus permit a Fujiwara to rule as regent. This was carried to such an extreme that all real power was taken from the Mikados and exercised by the regents. The power of the Fujiwaras at court continued till the close of the eleventh century.

The growing influence and importance of the noble houses of the Taira and Minamoto were contemporaneous with increasing military tendencies. Members of these families were at the head of the armies, resisting invasions and suppressing insurrections. The Fujiwaras had ruled through court intrigues. The Taira and Minamoto hewed their way with the sword. With the beginning of the twelfth century feudalism rapidly developed. The power of the central despotism

had vanished, and the real force of government was wielded by lords who directed the arms of the Samurai in the provinces. So marked was the tendency to militarism that even the priests of that most peaceful of all religions, Buddhism, appeared at the capitol in arms to enforce their demands. The struggle for political supremacy, carried on by the rival houses of Taira and Minamoto, devastated the country for centuries and was more enduring than any known war for the succession to a throne. Theoretically the right of the Mikado to rule was always recognized. By the success of one or the other faction no right was established, no claim of sovereignty denied. The struggle was for actual dominion, to be exercised in the name of the Mikado, but in spite of his feeble will. The successes of the Minamoto and their allies under Yoritomo near the close of the twelfth century resulted in his taking the title and office of *Sei-i Shogun*, which from that time became hereditary in the Minamoto family, and its possessor wielded the real power of the government. Yoritomo established a council of state, who were distributed over the provinces to share as military officers the power of the civil governors. He systematized the feudal system and is called its founder. He made his headquarters at Kama Kura near the site of modern Yokohama, where he died in 1199. Yoritomo is credited with improving the administration by establishing a court of justice, levying a uniform tax and forbidding priests to be warriors. Though wielding the actual power, he always went through the form of obtaining the sanction of the Mikado.

On the death of Yoritomo his son Yoriie succeeded as *Shogun*, but being weak and dissolute, he at once fell under the influence of his mother's family. At her instance a family council with her father, Hojo Tokimasa, at the head was formed. This council assumed the real power and administered the government in the name of the Shogun and Mikado, who were allowed to live in idleness and dissipation. The regency of the house of Hojo continued till 1334. The *shikken*, as the head of the house was styled, took care that the shogunate should never pass into strong hands but should

always be held by an infant or a weakling. Though the Hojos are given a hard name in history, under their rule the country was generally at peace and growing in prosperity. The intrigues and murders at court were perhaps of less consequence than the increased security of the common people, but this security could hardly have been of an exalted character under the growing power of the military class.

While incursions into Japan from Korea are recorded, none of them were in such force as to seriously threaten the independence of the empire. In 1275 the forces of the great Kublai Khan took possession of Tsushima and Iki and attempted to land in Kiushiu, but were driven off. Again in 1281 a far larger army was landed in Kuishiu, but the Japanese under Hojo Tokimmie met and routed them, and their fleet was destroyed by a typhoon. To one familiar with the struggle for supreme power in western nations it seems exceedingly strange that through all the centuries care was always taken to preserve the succession and nominal rule of the Mikado, and that after the power of the Shogun was established the same system was followed in reference to his office. The overthrow of the Hojo in 1134 was followed by an attempt on the part of the Mikado, Go-Daigo, to resume the active exercise of power and by the Ashikaga to rule as Shogun. In order to accomplish this an attempt to depose the Mikado by a forced abdication in favor of the Ashikaga's choice was made and resulted in a long internal struggle, each side drawing to its support the retainers of its partisans. For fifty-six years there were two rival dynasties, one of the north and the other of the south. During the wars of this period the country was devastated, and the condition of the people rendered correspondingly miserable. Piracy developed on the coast, and Japanese corsairs ravaged the coasts of China and Korea. After the settlement of their differences by agreement of the rival claimants in 1392 the country enjoyed a brief respite, but the spirit of faction and the love of strife attending the increase of the local and personal power of the country nobility soon plunged the country into civil war again. The *samurai* followed the daimio to whom they were at-

tached, no matter what the nature of the quarrel. The condition of Japan seems to have been essentially the same as that of Europe during feudal times, when each local ruler fought his equals and murdered and pillaged the defenceless. The priests contributed nothing for the betterment of conditions, but by their intrigues and licentiousness aggravated the miseries of the times. Kioto ceased to be a place of safety, and the old court nobility—the *Kugé*—were forced to find shelter in the castles of the *Daimios* in the provinces.

The Shogunate of the Ashikaga terminated in 1573, and a vacancy ensued until 1603, when Tokugawa Iyeyasu was invested with the office. The first European to reach Japan was the Portugese Mendez Pinto in 1542. He introduced firearms and the Christian religion. With the firearms they were greatly pleased, but the progress of Christianity was slow and followed by bitter persecution. The religion of the west cannot be said to have ever exercised a marked influence on Japanese society, and the wonderful awakening of recent times has been, not to the religion, but to the arts and civilization of the west.

After the conclusion at Sekigahara of the bloody wars which resulted in the elevation of Iyeyasu to the supreme power as Shogun, he proceeded to complete the system of feudal tenures and to parcel out the provinces among his supporters. He also took measures to eradicate Christianity. Under his administration the feudal system reached its height with the Shogun as its head, instead of the Mikado. His great success in attaining his two main objects, the perpetuation of the supreme power in his family and the peace of the country, is attested by the fact that his successors ruled substantially in peace for the ensuing 268 years.

In Japan, as in feudal Europe, the real power of the nobility was based on military organization and a theory of title to land. Without attempting any radical change of theory, Iyeyasu moulded the system to secure his own power. There were thirty-six leading families besides his own who took the name of *Matsudaira* and ninety of the *Kokushiu*, smaller landlords, whose revenue ranged from 10,000 to



100,000 *koku* of rice per year. These families held theoretically as feudatories under the Mikado, but actually in their own right. To secure his own power Iyeyasu seized the lands of his enemies by force and parcelled them out among his own retainers. The system of sub-infeudation under the great *daimios* prevailed in Japan as well as in Europe. A peculiarity of the Japanese system was that the estate of a *daimio* could neither be enlarged or diminished in any way without the express consent of the Shogun. Iyeyasu's retainers, called *hatamotos* or flag-supporters, ranked below the *daimios*, and had each a small train of from three to thirty retainers. They numbered about 80,000 in the empire and constituted the military basis of his power by which he held the Mikado practically as a captive, though nominally his sovereign. Below these were the private soldiers, also belonging to the *Samurai* or military class and under the command of the Shogun. Iyeyasu observed the policy of separating the great *daimios*, who had been or were suspected of being hostile to him, by assigning them disconnected tracts of land between which he placed his own tried vassals. The *Daimios* and *Samurai*, like the feudal lords of Europe, despised work and all who labored. Many of them were dissolute and given to brawling and robbery.

The head of the family held not only the title to the land but had full power over all its members. The wife belonged to the family of her husband. The practice of adoption was common, when there was danger of a failure of male heirs to fill the military tenancy, in which case the land would escheat to the lord. As in Europe the lords allowed the tillers of the soil only a meager subsistence. The idle, criminal soldiery took the lion's share and gave no return for it. The essential elements of the governmental system were ownership and hereditary tenure of the land enforced by military organization. In Iyeyasu's time the Mikado was unable to direct the military force and therefore shorn of actual power, though always recognized as the rightful ruler and the source of all titles of honor, which men prized as highly in Japan as anywhere in Europe. The rule of the Tokugawa from the time

of Iyeyasu to 1854 was distinguished by a settled policy of isolation from the outside world and military rulership at home. The feudal lords with the *Shogun* at their head and the *Samurai* at their command maintained peace at home, while population multiplied. The intercourse with the Dutch, the only European nation favored with a commercial treaty, was carried on under the most humiliating restrictions and confined to the places designated by the government. Intercourse with China seems to have been more favored. Though the military class was strongly fortified in the possession of all the advantages of the Japanese system, the agitation which resulted in the wonderful modern awakening to new ideas came from the scholars and thinkers among the nobility and *Samurai*. The extreme poverty and ignorance of the *Hinin*—common people—afforded them no opportunity for education, interchange of thought, or combination. The nobility and *Samurai* during the centuries of peace became more students than warriors, and their researches into the early history and religion of the country resulted in the rapid development of a sentiment in favor of the abolition of the shogunate and a return to the ancient form of government with the Mikado as the real head.

The advent of admiral Perry with a demand for a treaty of commerce with the United States in 1854 resulted in opening new ports for trade by the *Shogun*. This was quickly followed by treaties with other governments. The opponents of the *Bakufu*, or *Shogun* government, violently opposed the new treaties and used this action of the government as an argument in favor of the overthrow of the power of the Shogun and restoration of the Mikado to his ancient authority. Though apparently reactionary in these teachings and purposes, they have been real leaders in the wonderful awakening which has followed. Not only has the Mikado been restored to his ancient authority, but he has been far more active in promoting intercourse with the outside world and causing the youth of Japan to be instructed in the learning of the west than the *Bakufu* had been. As a result of the destruction of the power of the *Shogun* the whole system of

which he was a representative, and which held such complete dominion for two centuries and a half, has been swept away and a reconstruction of the social system has followed. The power of the great *Daimios*, amounting almost to sovereignty in their provinces, has been completely broken, and the military order has been abolished. At the time of this revolution the whole population numbered about 34,000,000, of whom about 2,000,000 belonged to the *Samurai*. At the head of the nobility stood the *Shogun* with a large army of retainers and great estates. Next came the *Daimios*, great landowners, with their military feudatories. Of *Daimios* in 1862 there were 255, classified as follows, three *Sanke*, descended from the three youngest sons of Iyeyasu, on whom he conferred great fiefs. Next thirty-six *Kokushiu* then seventy-five *To-sama* and lastly 141 *Fudai*. These were ranked according to their revenues measured in *Koku* of rice, a measure equal to a trifle less than five bushels. The revenues of the different *Daimios* ranged from not less than 10,000 to more than 1,000,000 *Koku* of rice. Next came the *Hatamoto*, immediate vassals of the Shogun, with incomes ranging from 500 to 9,999 *Koku*, having from three to thirty vassals each and filling many offices of state. They numbered about 80,000 families. Then the *Gokenin*. The *Samurai* were exempt from taxes and privileged to wear swords. The common people were divided into *Hiakusho*, peasants, *Shokonin*—handcrafts men—and *Akindo*—shopkeepers. Outside and still below these were the *Etas* (unclean) and *Hinin*—paupers. The above classification does not include the Mikado and the *Kugé*, or old court nobility, higher in rank but wanting in actual power and revenue. Of the *Kugé* 155 families were recognized. Though regarded as superior in rank even to the *Shogun*, under the feudal system they lost both their incomes and estates, and at the time of the revolution many of them were abjectly poor.

After the fall of the Shogunate the *Daimios*, partly of their own accord and partly on compulsion, surrendered their authority to the Mikado. They were mostly retained as governors for a brief period, but the old provinces were soon

broken up and divided into *Ken*, governmental districts. On giving up their possessions the *Daimios* and *Samurai* were to receive one-tenth the revenue, and were relieved of the support of their *Samurai* and *Yashiki* with which they had before been burdened. The *Samurai* were first excused from wearing swords and afterward forbidden to wear them. Their incomes were greatly reduced and they suffered most of any class from the change. Society then became divided and classified as follows:

1. The Mikado.
2. The imperial family.
3. The *Kuwa Zoku*—the nobility including both former *Kugé* and *Daimios*.
4. *Shikoku*, respectable families, old *Samurai*.
5. Common people.

The government after the restoration was in its principles essentially the ancient one, with the power theoretically in the Mikado but actually exercised of necessity through the instrumentality of ministers and bureaus. The great council of state consisted of three ministers, at whose sitting the Mikado presided, and this was the supreme legislative and administrative authority.

Ten departments of government were established, over each of which a minister presided, namely, Foreign Affairs, Interior, Finance, War, Marine, Education, Worship (afterward abolished), Public Works, Justice and Imperial Household. The country was divided into three *Fu*—chief towns—seventy-two *Ken*—districts—A *Han*—the Riukiu Islands—and the colony of Yezo. Over each *Ken* there is a governor.

The restoration of the Mikado was soon followed by a demand for popular representation in the government and a constitution limiting the powers of the various departments. In 1878 provision was made for local assemblies in the provinces. The qualifications for electors were that they should be males of the age of twenty years and pay a land tax of five dollars—voting to be by ballot. These assemblies proved so satisfactory that on February 11, 1889 the Mikado promul-

gated a constitution to take effect the following year on the convening of the Diet for which it provided.

The most important provisions of the constitution are as follows:

"The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal."

The succession shall be to imperial male descendants according to the imperial house law.

The Emperor exercises legislative power with the concurrence of the Imperial Diet, which he convenes and dissolves. In cases of urgency, when the Diet is not in session, Imperial ordinances may be promulgated to have effect until the next session of the Diet.

The Emperor determines the organization of the administration, appoints and removes civil and military officers and fixes their salaries. He commands the army and navy, declares war, makes peace and concludes treaties. He confers titles, ranks and marks of honor, grants pardons and commutes punishments.

The second chapter provides that the conditions necessary for being a Japanese subject shall be determined by law, that subjects may be appointed to civil and military offices equally, are amenable to service in the army and navy, are at liberty to change their abode within legal limits, shall not be arrested, detained, tried or punished unless according to law by judges determined by law, that houses shall not be entered or searched without consent except in cases provided by law, that the rights of property of Japanese subjects shall be inviolate and that within limits not prejudicial to peace and order they shall enjoy freedom of religious belief, that within limits of law they shall enjoy freedom of speech, press and public meetings. All these provisions apply to the army and navy, except as modified by the laws and rules governing them.

The Imperial Diet established by the constitution consists of an upper and lower house. The House of Peers is composed of members of the Imperial family, of the orders of nobility and persons nominated thereto by the Emperor. The House of Representatives is composed of members elected by the

people according to law. Every law requires the consent of the Imperial Diet.

Proposed laws may be initiated by the Emperor or either house. The Diet shall be convened every year and sessions shall last three months, but may be prolonged by Imperial order, and may be convoked in extra session by Imperial order. Sessions of both houses shall begin and end together. When the House is dissolved the peers must be prorogued. After dissolution of the House of Representatives a new House must be convoked within five months. No debate or vote can be had in either house unless one third of all the members are present, and a majority decides. Deliberations must be public, unless secret sessions are demanded by the Government. Each house may enact rules for its government, and members shall not be held to answer elsewhere for expressions or votes given in the House. During a session members are privileged from arrest, except for flagrant offenses, unless with the consent of the House.

The Ministers of State and Delegates of the Government may at any time take seats and speak in either house. Ministers of State shall give their advice to the Emperor and be responsible for it. All laws and ordinances require the counter-signature of a Minister of State.

A Privy council, whose powers are not defined, is recognized, to deliberate with the Emperor on important matters of State. "The Judicature shall be exercised by the courts of law according to law in the name of the Emperor. The organization of the courts of law shall be determined by law."

Judges shall be appointed from qualified persons and hold office during good behavior. Trials shall be public unless exceptional circumstances demand secrecy. New taxes or changes in old ones can only be made by law, and national loans must have the consent of the Diet.

Projects for amending the constitution may be submitted by Imperial Order, but must have two thirds of the members present and receive the vote of two-thirds of those present. The Diet cannot modify the Imperial House law, the constitution cannot be modified by the Imperial House law, and no modification of either can be introduced during a Regency.

The changes in the form of the government afford some indication of the real progress made by the Japanese people in the last half century. It is unique. A nation which had lived in what may, as compared with the lot of other nations, be fairly designated as profound peace for two hundred and fifty years, suddenly became thoroughly dissatisfied with its internal system and external relations. The tottering *Shogun* government opened the ports to foreigners. Its enemies took advantage of the prevailing prejudice against foreigners and Christians to overthrow the *Shogun*. This accomplished and the Mikado restored, not only were the old treaties ratified, but new and more liberal ones were made. The whole military class was destroyed, as a class, yet following that destruction the military spirit has been aroused, and marvelous advancement in the organization of army and navy followed, civil wars accompanying the change were quickly terminated, and whatever the impulse prompting the action of either party, the result is a determined effort to produce a better form of government and improved social and economic conditions.

No people on earth have manifested such a willingness to learn and profit from the instruction of foreign people as the Japanese during the last fifty years. Not only have they established numerous schools throughout the empire, in which foreign as well as native teachers are employed, but many of the flower of Japanese youths have been educated in the leading universities of Europe and America. Nor has the purpose been merely to gain knowledge beneficial to the government or the ruling class, but on the contrary everything useful to the people as well as tending to the strength and standing of the nation has been eagerly sought after. The recent wars with China and Russia clearly demonstrate the marked progress made in the art of war, while the arts of peace have been cultivated with avidity, and national pride and military spirit have become correspondingly active. The progress has been strictly Japanese. It has not been induced by any influx of a dominating superior race nor by any foreign directing hand. The people of Japan, living under a form of government which in theory was an extreme representative of despotism,

have reached out after wisdom wherever they could find it, have taken home the lessons they have learned and assimilated foreign ideas to Japanese conditions with marvelous rapidity. Under an absolute despotism the spirit of progress has developed with such strength as to rule the rulers.

The labors of progressive Japanese have been recognized and their counsel followed more readily than those of reformers in republican America. Of all the nations of the earth the Japanese have in the last half century been the most progressive, yet the multitude of common people are still extremely poor, and the problems confronting the government and people are now no less complicated and perplexing than heretofore. The basis of this progress it must be clearly apparent did not lie in the genius of their government. Nor can it be attributed to the effect of the teachings of Christians, for in no country has less progress been made. Indeed one of the forms of agitation preceding the new development was for a restoration of the ancient religion, Kami worship or Shintoism. Much of the learning and customs of the Japanese was borrowed from China. The teachings of Confucius had long been studied, and the form of government and organization of society were moulded to a great extent by them. Buddhism had many followers. The constant inculcation in the minds of the children of the duty of obedience to parents till their death and of worshipful submission to the paternal authority of the Emperor, which furnished the foundation of Chinese civilization, seems to have developed happier domestic conditions in the islands than on the continent. Notwithstanding the effort to return to the ancient religion and the ancient form of government, rapid changes followed, resulting in the admission of light on all questions, the emergence of the Mikado from that seclusion in which he had been regarded more as an object of religious veneration than a ruler to be obeyed, to be seen, known, advised and consulted with by his subjects, and in breaking down the barriers which excluded Christianity.

Though there were some violent dissensions in the early years of constitutional government in Japan the trend toward



settled conditions of order has been continuous. During the first twelve sessions of the diet, extending over a period of eight years, there were twelve dissolutions, but during the next thirteen sessions, extending over a period of eleven years there were but two. During the first eight years there were six changes of cabinets; while during the next eleven years there were but five.

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## CHAPTER XII

### TURKEY

The Turkish race, that now dominates the country which was the seat of the early germs of western civilization, made its first appearance, so far as is known to history, in central Asia, where Chinese accounts locate it about 180 B.C. In the time of Justinian the Turks established a large empire with their chief seat in the vicinity of the Altai Mountains. The mode of life of the people was mainly nomadic, and the dominion established was not enduring. In course of time the tribes became scattered, and under pressure from Mongol enemies early in the thirteenth century one of them passed through Persia into Armenia. Having aided the Seljuk emperor in a battle with the Mongols, it was allowed to settle on the Byzantine frontier. On the fall of the Seljuk Empire Osman, chief of this particular tribe, succeeded in extending his power over kindred tribes scattered throughout Asia Minor, and in 1301 began to coin money and to have the public prayers read in his name as monarch. From his accession to power the modern Turkish empire dates. Like most founders of despotisms he was a man of capacity and morals superior to most of his contemporaries, and devoted his energies with singular disinterestedness to the establishment of order and justice, as well as to military operations against his enemies. He combined with the religious zeal of the devout Moslem and its characteristic military spirit great generosity and love of justice. He was devoid of avarice, and on his death his wealth was found to include only two or three suits of clothes, a few weapons, some horses and a flock of sheep. His administration of justice was so far superior to that of the Greek emperor that the subjects of the latter went to him for protection. For a century the Ottoman Empire was vigorously administered and its boundaries extended by the descend-

ants of Osman, till the reign of Bayazid I, when the Tartar hosts under Timur overran the empire, annihilated Bayazid's army and took him prisoner in 1403. Timur withdrew and Muhamed, son of Bayazid, who died in captivity, restored the empire. In 1453 Muhamed II besieged and took Constantinople and put an end to the Roman Empire of the east, which had dwindled to a mere shadow. In 1481 a Turkish army crossed the Adriatic into Italy and stormed Otranto, which however they were not able to hold. Under his successor, Bayazid II, the Turks won their first great naval victory off Sapienza over the Venetians. The empire continued to grow until the reign of Suleyman I, under whom it reached its greatest extent and power, but also met with the best organized and most determined resistance. From Constantinople the Sultan ruled in Europe almost to the gates of Vienna; in Asia beyond the Tigris, and in Africa from Egypt to Algiers.

Starting with Osman in 1301 and continuing till the death of Suleyman in 1566 the Turks had a succession of remarkably vigorous and successful rulers. The degeneration and decay, which usually manifests itself so quickly in the progeny of absolute monarchs, did not appear, but Suleyman is given the character of one of the best and most accomplished rulers of his age, and for forty-six years his vast dominions felt the vigor of his untiring energy. Although his reign was sullied by his execution of his brother-in-law, whom he had made grand vizier, and by other arbitrary executions, and by great barbarities committed by his army during the siege of Vienna, such things were characteristic of that age. The Turkish Empire then included all the principal seats except Rome of that ancient civilization which we have inherited. Chaldea, Babylon, Nineveh, Egypt, Phoenicia, Greece, Carthage, Palestine, Constantinople, all Asia Minor and most of the Greek islands were subject or tributary to the Sultan. The ruler was descended from a barbarous tribe of central Asia through the male line, intermixed with more polished races through the females. He ruled entirely in accordance with the theory of government established by Mohammed and the Caliphs. He

was absolute in the sense that his orders must be obeyed, and that he could not be called to account for any act by any constitutional authority. The Sultans have in fact at all times exercised arbitrary power, and have put to death without trial such persons as they chose, when they could find instruments to execute their will. In the administration of the government, however, the theory is not arbitrary power but divine law as declared in the Koran. All questions in courts of justice are to be determined by the law declared by the Prophet, when such can be found, and in cases where the Koran furnishes no rule, the precedents established by the Prophet and the early Caliphs are of great authority.

The feudal system, which was already declining in western Europe in the time of Osman, never gained much hold in the territory included in the Turkish empire. As a result of the Crusades it was established and maintained at Jerusalem during the dominion of the Franks, but expired after they were driven out. The spirit of the Koran, following that of the New Testament in this respect, is one of equality, and no order of nobility existed in the empire. Equality however referred only to free males. Slavery was recognized, and women were regarded as inferiors. Polygamy has always been allowed, but in fact is only practiced by a very small number of the people. The teachings of the Koran constantly magnify the value of the future life and the future joys of the true believers who are saved and the frightful torments of the damned. The heaven offered is a sensual one, fitted to the low instincts of the Arabs of his time. Mohammed taught his followers to despise the things of this world, and while he made comparatively little effort to perfect a governmental system, what he did in that line was enjoined as a religious duty and became at once binding as a civil and religious duty. Herein lies a marked contrast between the teachings of Jesus and those of Mohammed. Jesus announced the moral law and the necessity for its observance in order to gain future happiness, but made no attempt to promulgate a code of civil law. Throughout the whole history of the Turkish empire the religious influence has been of prime importance in mould-

ing public sentiment and private character. At the time of Suleyman's reign Turkey was at least one of the most advanced nations in agriculture, manufactures, internal commerce and in its schools and administration of the laws. Its theory of government and code of laws were however unprogressive, and while the government of today may not be distinctly worse than that under Suleyman, it appears to be so by comparison with the Christian nations.

From the reign of Suleyman the fortunes of the Turks began to wane. His son and successor Selim II was a weak debauchee, the first of the line who shrank from the dangers of war and preferred the pleasures of the palace. Murad III who succeeded him had all the vices and weaknesses of his father, and the administration fell into the hands of corrupt favorites. The Janissaries, to whom as the first regular standing army of Europe was due much of the credit of the victories under preceding reigns, manifested a disposition similar to that of the old Praetorian guard of the Romans. They mutinied on several occasions and compelled compliance with their demands. Here followed a succession of weaklings and in 1622 Osman, who sought to free himself from the Janissaries, was deposed and soon after murdered by his vizier whom he had deposed.

Murad IV, who ascended the throne in 1623, had the old time vigor of the Osmanlis. He caused the leaders of the mutinous Janissaries to be beheaded, and proceeded to purge the administration of its corrupt elements by causing all such as he deemed necessary to be put to death. He was a reformer, who carried out his reforms by the methods of the despot. His successor Ibrahim again exhibited the weakness and folly of a princely debauchee. After his time there were examples of vigorous administration by able grand viziers, but the Sultans were generally weak. Mahumed II—1808-1839—exhibited more vigor and in 1828 destroyed the rebellious Janissaries, who had so often disturbed the peace of the capital and dictated terms to the Sultan and his ministers. With the growth of the power of Russia that of Turkey has correspondingly waned. The evils of its despotic system and

the blighting influence of its narrow fanaticism have prevented that development and progress which has been so general in Europe, and instead of its position as the first power in the time of Suleyman, it is now looked upon as one of the weakest and worst governed nations of Europe. Nevertheless modern ideas are permeating the empire. In 1876 a liberal constitution was promulgated, but not given effect. On July 24, 1908, after a bloodless revolution the constitution of 1876 was restored. Turkey's European possessions have been repeatedly curtailed and in 1912 Italy had forcibly taken a part of her African possessions, and the allied Balkan states and Greece have waged successful war and inflicted crushing defeats on her, further curtailing her hold on Europe.

Prior to the revolution of 1908 the governmental system of Turkey was a theocratic despotism, hereditary in the family of Osman. The Sultan is still the spiritual head of the Moslem world, but under the new constitution his temporal power is that of a constitutional monarch. A ministry responsible to the Turkish parliament, instead of to the Sultan, has been established. The grand vizier, named by the Sultan, presides over the council of ministers, which is made up of the Sheik-ul Islam and the ministers of home and foreign affairs, war, finance, marine, commerce and public works, justice, public instruction, *evkof*, grand master of ordnance and president of the council of state. The Sheik-ul Islam is the head of the Ulema and representative of the Moslem Hierarchy, being nominated by the Sultan with the approval of the Ulema, the general body of doctors of Mohammedan law. The importance of the religious establishment is disclosed by the vast possessions of the mosques and the fact that all the Moslem schools are connected with the mosques, and the government through the minister of public instruction and board of censors exercises a censorship over all the books used and branches taught in the schools. This censorship has at times also been extended to the Christian schools in Armenia and elsewhere, and the use of books inculcating doctrines deemed dangerous has been suppressed. The minister of *evkof* is at the head of the department having charge of

property held by the mosques either for religious uses or in trust in whole or in part for uses declared by the donors. It is estimated that between one-third and one-half of all the property in the empire is held by the mosques. The administration of the mosque revenues and the execution of the various trusts on which much of the property is held render the department of *evkof* one of the most important of the government. For administrative purposes the empire is divided into *vilayets* (provinces), over which a *vali* (governor), is appointed. These are divided into *sanjaks* or *mutessariks*, which are subdivided into *kazas*, which are again subdivided into *nahies*. The chief officers under the *valis* are styled respectively *mutessarifliks*, *kaimakams* and *mudirs*. The *valis* and *mutessarifis* bear the title of *pasha*, and all but the *mudirs* are appointed from Constantinople. These are named by the *valis*. All these officers exercise both judicial and executive functions and, except the *mudirs*, are mostly chosen from a place other than that where they rule. Each of them has a council, composed of members of the different communities, with whom he advises as to matters of detail. The character of the local administration is directly dependent on the character and capacity of the *vali*, who is a local autocrat. The collection of the revenue is farmed out to the highest bidder, a system always productive of oppression and dishonesty. The authority of the different officials is without definite limitations and naturally is irregularly and oppressively exercised. No efficient system of checking the accounts of officials who handle the public revenue exists, and the Turkish officials are generally rated as corrupt and avaricious. The Moslem population is of course wholly subject to the official system above outlined, but foreigners settled in the country are by treaty stipulations exempted from the jurisdiction of the local courts, and cases between themselves are heard before the consuls of their respective governments. Cases between a Turk and a foreigner are heard before a mixed court. Before the revolution military service was compulsory only on Moslems. It is now compulsory on all Ottomans. There are many schools maintained in the Christian communities of the Greeks, Ar-

menians and Syrians, some of which afford a good range of studies when not restricted by the censorship, which the fanatical Moslems at times exercise.

Under the early caliphs the schools were not merely for the purpose of propagating a knowledge of the Koran, but there was an unrestrained desire for improvement in the knowledge and use of language and of the sciences. Much was borrowed from Greeks and Romans, and while the superiority of the Koran over all other theological teachings was maintained, the search after truth outside its covers was stimulated rather than suppressed, but from the tenth century the orthodox Sunnites, who still maintain their ascendancy in Turkey, have most successfully inculcated profound reverence for the established faith and stifled all tendencies to freedom of thought and original investigation. The principal school of Turkey is the University of Constantinople. Most of the students are said to come from the poorer classes, and enter this school after having received primary instruction in the local schools sufficient to enable them to read, write, count, and repeat the Koran. They are first taught classical Arabic grammar and then the dogmas of Islam. The Koran, traditions of the Prophet and the Sunna are expounded by the teachers, and the pupil is given some instruction in the principles of government as administered in the courts. On conclusion of his course the scholar goes out with his certificate to find a place as a teacher, preacher, *cadi* or *mufti* or in some other governmental post. The great corporation of the *Ulema*, of which he has become a part, is usually able to find him a place without difficulty, for there are not nearly enough graduates to fill all the positions. The purely religious offices of *imam* or *khatib* are not given exclusively to students and do not confer a place in the hierarchy or special social status, but the *cadi*, local judge, receives his appointment from the government and is a person of importance. In every place of any importance there is at least one *cadi*, who tries and decides all causes. From his decision an appeal lies to the *mufti*, who reviews the questions of law only. These officers are to some extent independent of the central authority, and the spirit of



religious zeal and common interest, added to the great local influence gained by them by reason of their superior learning and judicial functions, renders the *Ulema* a power which no Sultan has ever been able to ignore. It was a powerful factor in the revolution of 1908.

## CHAPTER XIII

### GREECE

We know the Greeks better than any other ancient people besides the Hebrews, mainly because more of their literature and of the records of their doings have come down to us than from any other. Their language was the vehicle through which we received the new testament, and their culture has been preserved and transmitted to us in many ways. Though few in numbers at all times and operating in a limited field, their intellectual activities were such that their works are still worthy of close study and full of instruction. In governments and laws they furnish experiments on a small scale of many schemes of social organization. Unlike their oriental neighbors, they adhered to no beaten path but were full of originality and invention. No religious creed enjoined loyalty to a particular form of government or imposed its laws on them. No ruler, prior to Alexander, was able to establish his authority over all.

Though much of tradition and more of fable concerning the early inhabitants of Greece have come down to us, it is sufficient for our purpose to know that in the earliest times, concerning which we have any light, there were movements of people from northern Asia Minor into Greece and that Phoenician traders settled on the coast. While Homer writes of kings, and the Greek traditions name early kingdoms, the extent of each was so small that the name seems illy fitted. The characteristics of the early organizations are analogous to those of tribes rather than states. The king was a chief, whose authority was fixed partly by custom and partly by personal capacity to lead.

The most marked peculiarity of the development of the early Greek societies was the tendency to segregation and to build cities. Not only in Greece proper but throughout the

Greek islands, the coast settlements in Asia Minor and on the continent of Europe, each settlement developed its city of more or less size, with so much adjacent land as was necessary for its support, and maintained its petty government, independent of every other city or state. Though the form of government was in the earliest times usually monarchical, most of the petty kings were content to rule over single cities and rarely attempted conquests beyond the lands used by their people. The desire to hold other cities by force seems to have been almost unknown, though there were instances of the exaction of tribute. The island of Crete may be mentioned as an exception. The authority of Minos and other of its kings is said to have extended over the whole island, and the romantic tale of Theseus relates that Athens was forced to pay tribute to Minos until Theseus liberated it. How much of history and how much of fable is contained in accounts of these persons it is impossible to determine.

In the early Greek communities the king consulted the elders in matters of public interest, and matters of first importance were submitted to and decided by a popular assembly. Polygamy was not allowed, but slavery existed from the earliest times till the subjugation by the Romans. As our accounts of the first Greeks come through themselves, it necessarily follows that the record starts with a people considerably advanced in knowledge and the arts. That much of their culture was borrowed is conceded, and credit is given the Phoenicians for their alphabet.

### *Sparta*

The most peculiar and enduring government was that developed at Sparta. The early Dorian settlements in the middle valley of the Eurotas in Laconia, forming a cluster of villages, developed into the Spartan state. When these settlements were first made and just what comprised the kingdom of Agamemnon, whose fame may rest far more on the vivid imagination of Homer than on historic facts, is unknown. The historic period is generally regarded as dating from the time of Lycurgus, about 900 B.C. The elements

making up the Spartan state were, 1, The Citizens, who were Dorians, 2, The Perioeci, who dwelt about the city in Laconia and were landholders, but given no voice in the government, and 3, The Helots, who were serfs of the state, bound to the soil and compelled to till it for the Spartan owners, to whom they were forced to yield a large share of the entire produce. These were allowed to have families, could not be sold out of the country and fought in the wars.

At the head of the state, though with little real power, were two hereditary kings, who commanded the armies in war. The council of elders (*gerousia* or senate), was made up of twenty-eight members, elected by the people from amongst the citizens over sixty years of age, who then held for life, and the two kings, making in all thirty. The senate formulated public measures and submitted them to the general assembly of the people for approval or rejection. It was also the great court of justice. The institution of the Ephors is said to have been established after the time of Lycurgus. They were five in number, elected annually by the people, and had authority to call all public officers, even the kings, to an account. It was they who had power to make war or peace, and in time they came to be the chief power in the state. The main design of the people was to restrain the power of the kings through the *Ephors*.

The central idea of all the Spartan institutions was military. A Spartan citizen had nothing to do with any trade or industrial occupation. The Perioeci and Helots performed all the labor of the state. The Spartan was raised a soldier, and from childhood subjected to exercises and training calculated to develop physical strength and endurance as well as courage and military discipline. Girls, who were to be the mothers of soldiers, were trained similarly and exercised in running, wrestling, boxing and throwing quoits and darts. The military spirit was inculcated in the females, and they became the censors of the actions of the soldiers. There was great freedom of association of males and females among the young, and nowhere else among Greeks were women treated with such high respect.

A peculiar feature of Spartan life was the public mess, to which all contributed and which all were bound to attend, not excepting the kings. The members were distributed to tables in parties of fifteen, selected by ballot. The fare was plain and partaken of by all alike. Especial attention was paid to the organization of the army as well as to the development of the individual soldiers. The sole aim of Spartan policy being to develop its military power, the moral tone was necessarily low. At birth the boys were inspected by the elders of their tribe and, if found deformed or puny, were exposed so that they perished. The strong and sound were regarded, not as subject to the guidance of their parents, but of the state. They were early accustomed to hardships of every kind for the purpose not merely of giving them strength and endurance, but also courage and self-reliance. At the age of seven they were assigned to classes and subjected to constant and severe discipline. Education did not lead to literature, art or any useful calling, but to war alone. It is most remarkable that, with no application to any useful labor, the Spartans through so many years should have maintained their physical vigor. Athletic exercises were doubtless very beneficial in the main, but the violent strains to which youths were subjected often resulted in crippling or even killing them. They were also subjected to cruel beating as a religious rite, often resulting in death. This was said to be for the purpose of inuring them to pain. In war the duty of the soldier was to conquer or die. No circumstances whatever were recognized as allowing surrender or retreat, and one who escaped from a lost battle was disgraced and treated by the whole community, men, women and children as infamous forever after. While the Helots and Perioeci tilled the soil, tended the flocks and performed all useful labor, the ruling class were always dwelling in a military camp under strict and constant discipline. Some attention was paid to oratory and the use of language, brevity and point being the excellences mainly sought. As the lands were parcelled out among the people, and no one was allowed to engage in any business by which wealth could be accumulated, there was of necessity a

remarkable equality of condition, though the kings were allowed much larger possessions than the rest. The Spartans extended their power in the Peloponnesus at an early time, but did not follow a policy of conquest. The purpose of their military system was defensive rather than offensive. Not till after their people had become corrupted, during the Persian wars, did they rule over subjugated communities by means of Spartan governors and garrisons. This was soon followed by the rise of the Macedonian power under Philip, which terminated the independence of Sparta as well as the other Greek states. For more than 500 years this state maintained its unique character and the integrity of its institutions.

Its long continuance is clearly attributable to the intense devotion of the citizens to the preservation of the state. Patriotism here was in fullest bloom. Each individual deemed the state entitled to all his efforts while living and to the sacrifice of his life when necessary. Nowhere else has the spirit of self-sacrifice been so constantly maintained or at so high a pitch, yet this devotion was not prompted by love of man nor of all the people composing the state, nor of the Spartan citizens as individuals. It was devotion to that body of men of which the individual was a part. To foster this spirit parents rejoiced in the death of sons who fell bravely fighting, and mourned over and reviled those who fled in safety. The spirit constantly cultivated was one of hardness, but long singularly free from avarice and selfishness. The Helots were cruelly treated, even to systematic assassination. The natural affections were stifled to permit the destruction of weak offspring. The system was rigid. It admitted of no great expansion and aimed at no intellectual elevation, no development of science or philosophy. Its one sublime ideal of devotion to the public was confined to the narrow limits of Sparta and not only wanting in love for others, but its highest purpose was the overthrow of enemies in battle.

In order to preserve the integrity of his system, Lycurgus, Sparta's great law-giver, prohibited foreign travel, except in the interest of the state, and excluded all foreigners, and foreign commerce as well, from the city. To maintain equality

he perpetuated poverty. Children were regarded as children of the state, and the boys were raised together under a training which inculcated craft and courage. Their clothing was scanty, and at the age of twelve they were deprived of all but a single upper garment a year. For beds they were allowed to gather reeds, and slept together in companies. The command of the companies was given to a youth who had been two years out of his class, chosen by an inspector. A principal business of the elders was watching the conduct of the boys and giving them instruction. Modesty in the modern sense was not esteemed a virtue. At certain festivals and games the young of both sexes appeared in scanty costume in the presence of each other and of the elders, but all were required to conduct themselves with strict decency and decorum in all respects. The marriage custom was a forcible carrying off of the bride, and the newly married pair were not allowed to remain together, but only to meet each other by stealth. It was deemed honorable for a feeble husband to allow his wife to have children by a man of superior qualities. It was believed that this tended to the production of better offspring. Marriage was so far compulsory that an old bachelor was in disgrace, while the father of children was honored.

Three fundamental laws declared by Lycurgus are mentioned. 1. Not to resort to written laws. 2. Not to employ in housebuilding any other tools than the axe and saw. 3. Not to undertake military expeditions often against the same enemy.

Capital offenses were tried before the senate, others by the ephors separately or all together. There being no written laws, judgment was given in accordance with the sentiments of the judge as to the merits of the particular case. The simplicity of the Spartan society and the absence of all commerce with the outside world afforded no basis for an elaborate system of laws.

As to the land tenure; although Plutarch states that Lycurgus divided the land into 9,000 shares for Spartan citizens and 30,000 shares throughout Laconia for the other inhabi-

tants, modern critics discredit the statement. Nor can any very definite statement of the law of inheritance be made. There were inequalities of possessions among the people and recognized titles to land. It was from the produce of their estates alone that the Spartan citizens furnished their quotas to the public tables. Whenever one became too poor to contribute his share, he lost his citizenship.

The military organization started with the *enomoty*, consisting of from twenty-five to thirty-six men of about the same age under a leader. Two to four of these were combined into a *Pentecosty*, of which two to four formed a *Lochus* and the *Mora* contained 400 to 900 men. The military superiority acquired by the Spartans through their system not only secured their independence, but gained for them a predominating influence among all the petty Greek states, which they retained until the Persian war. There was a constant tendency however, for the number of citizens to diminish, so that in the time of Aristotle there were only about 1000. This is attributed to the gradual concentration of the title to the land in a few hands. No other Greek state maintained the integrity of its social organization so long, but, like every other rigid system which contained no provision for changing conditions, in time it lost its early spirit and at the same time shut out the invigorating influences of contact with the outer world and that spontaneous growth, which can only come rapidly under conditions which invite new inspirations. Advancement comes with new ideals, and to continue the ideals must advance as the people move up. Mere permanency of institutions or conditions evidences stagnation, rather than a full and glorious life of progress.

### *Athens*

The history of Athens appears mythical and uncertain till a later date than that ascribed to the establishment of the Spartan system. The early Ionian people of Attica were divided into four tribes and these again into *Phratries* and *Gentes*. Each *gens* was composed of a number of households not, it is said, necessarily all related to each other by blood, but



bound together by religious ties, proximity of possessions and mutual dependence in protecting common interests. These divisions were mainly religious and social. Besides these each tribe was divided politically into three *Trettys*, and each *Tretty* included four *Naukraries*. Prior to the time of Theseus there was no central authority in Attica, each small town maintaining its independence. Theseus, who has been invested by Greek imagination with heroic virtues and mythical adventures, appears to be a genuine historic character and to have first established the ascendancy of Athens over Attica and, if any credit can be given to the tale of his adventures in Crete, he relieved the people from the payment of tribute to King Minos. There is so little reliable history of Athens prior to about 750 B.C. that nothing can be safely built on it. Codrus is said to have been the last who was permitted to be called king, his successors being styled *archons* and holding office for life till Alkmaeon, when the term of office was reduced to two years. This continued for seventy years, when the office was made annual, with nine *archons* among whom the powers were distributed. Down to 714 B.C. the *archons* were all descendants of Medon and Codrus, but after that date any of the *eupatrids* or nobles became eligible. At the expiration of his term of office the *archon* whose administration was approved became a life member of the senate of the *Areopagus*. The functions of this body were both judicial and political. The *archons* were not of equal authority. At the head was the *Archon Eponymous*, who determined all disputes relative to the family and relations in the *gens* and *phratry*, and was guardian of widows and orphans. He was styled the *Archon*, and from his name the year was designated in their chronology. The *Archon Basileus* heard complaints respecting offenses against religion and also of homicides. The *Polemarch* was the general and judge of disputes between citizens and non-citizens. Each of these conducted certain religious festivals. The remaining six, styled *Thesmothetae*, had general jurisdiction of other matters of dispute. In 624 B.C., Draco, then one of the *archons*, was directed to put the laws in writing, so that they might be

shown and known beforehand. The famed Draconian code was not new laws made by him, but old ones reduced to writing. Its severity has often been remarked, but so little of it has been preserved that its contents cannot be given or even summarized. It was in his time that the judges, called *Ephe-tae*, made up of fifty-one elders of leading *gentes*, were established with power to judge in certain cases of homicide. They sat in three different places, according to the nature of the charge and defense, and were permitted to pass a sentence less than death according to the justification or excuse, whereas it is said that the *Arcopagus* could only condemn to death. Peculiar religious ideas connected with the different places seem to have produced this system. The constitution of such a variety of courts for trial of homicides would seem to indicate a great number of such offenses. About 612 B.C. Cylon seized the Acropolis and attempted to establish himself as tyrant, but failed miserably and many of his followers were slain, some at the sanctuaries.

At the time of Solon the record becomes more clear, and we have a more satisfactory account of the Athenian state. Plutarch tells us that in Solon's time there were great disorders in the state. Cylon's attempted usurpation and the slaughter of his followers in the sanctuaries left bitter factions and aroused superstitious fears. But more deep-seated were the troubles arising from the conditions of the people and their different views of government. He says, "The inhabitants of the mountainous part were, it seems, for a democracy; those of the plain for an oligarchy; and those of the sea coasts contending for a mixed kind of government, hindered the other two from gaining their point. At the same time the inequality between the poor and the rich occasioned the greatest discord, and the state was in so dangerous a situation that there seemed to be no way to quell the seditions or to save it from ruin but changing it to a monarchy." Of the poor debtors some were made slaves, some sold to foreigners, others sold their children. The greater number determined to resist this oppression. Solon was of the eupatrid order and had gained great reputation and the confidence of all classes

as a soldier and a citizen. He was made *archon* in 594 B.C. and given authority to reform the laws and remodel the government. He repealed the penal laws of Draco, except those concerning homicide, because of their severity, idleness and petty larceny having been punishable with death. A more difficult question to deal with was that of the oppression of the poor by rich creditors through harsh laws harshly enforced by the wealthy class, who held all judicial offices. Not only were most of the small estates mortgaged, which was done by setting up a stone on the land inscribed with the name of the mortgagee and the amount of the debt, but the creditor might take the body of his debtor as security and in default of payment enslave or sell him. Against this system and the merciless and unjust enforcement of it the poor clamored for relief.

The difficulties experienced by the eupatrids in maintaining order and enforcing the rights of creditors seems to have induced them to accord Solon the ample power he was given to reform the laws, he being one of their own order. The poor also clamored for an equal division of the lands. This Solon denied them, but he gave sweeping relief to the debtors. He released all mortgages and removed all the mortgage pillars from the land. He discharged all debtors, whose bodies were pledged as security, from their debts, released the debtors who had been enslaved, and even bought back others who had been sold out of the country. He prohibited debtors from thereafter pledging their persons as security, and also forbade them from pledging or selling their children or unmarried sisters. For the relief of the other debtors, for whom no such security was given, he provided that the *minae*, which before went for seventy-three *drachmas*, should go for 100 thereafter, thereby relieving debtors by increasing the legal value of the coins. Citizens who had been disfranchised, except those condemned by the *areopagus* or *ephetæ* or in the *prytaneum* for murder robbery or treason, were restored to their former privileges.

It was in remodelling the official system that Solon's work produced the most lasting though not the greatest immediate

effect. He began by a new classification of the citizens based on incomes. Those having annual incomes of 500 measures in wet and dry goods, took first rank and were called *Pentacosiomedimni*. Those having between 300 and 500 measures were put in the second class or equestrian order. Those having 200 to 300 constituted the third class, and all whose incomes were less were placed in the fourth class. The first class alone were eligible to the archonship and military commands. The second were the horsemen, the third the heavy armed infantry. These three classes were subject to direct taxes on the value of their possessions by a graduated system of valuation, having the effect to increase the rate according to the size of the estate. The fourth class were not subject to direct taxation, and were not eligible to office, but they were given what in time proved to be a most important right, that of sitting and voting in the general assembly. They chose the *archons* from the first class and on the expiration of their terms passed judgment on their conduct, and might debar them from taking seats in the senate of the *Areopagus*.

He also established a senate of 400 members, made up of 100 elected by the people from each of the four tribes. All citizens, except those of the poorest class, were eligible to the senate. The senate considered and formulated matters to be submitted to the general assembly, convoked and superintended its meetings and executed its decrees. The old senate of the *Areopagus*, made up of past *archons* whose conduct was approved, was retained and given enlarged powers over the execution of the laws and the punishment of men of idle and dissolute habits. The laws of Solon were inscribed on wooden tables, which might be turned round in the oblong cases that contained them. Plutarch says some of them were still preserved in the *Prytanium* in his time. Solon forbade the exportation of all agricultural produce except olive oil. The *archons* were required to solemnly curse such as violated the law. He allowed only such immigrants to become citizens as came to reside at Athens permanently and for the purpose of carrying on some useful calling. If a father failed to teach his son a trade or profession, the son was under no legal

obligation to support him in old age. As the people of Attica had to resort to wells for water, he provided that, where there was a public well, all within four furlongs should make use of it, but if the distance was greater they must dig for themselves. If after digging ten fathoms they found no water, they might fill a vessel of six gallons twice a day at a neighbor's well. He that planted a tree on his ground was to place it five feet from the line, and if a fig or olive, nine, because of the length of its roots. He that dug a pit or a ditch was required to dig it as far from his neighbor's land as it was deep. Bees were required to be kept three hundred feet from those of a neighbor. Plutarch says, "The most peculiar and surprising of the laws is that which declares the man infamous who stands neuter in time of sedition. It seems he would not have us be indifferent and unaffected with the fate of the public, when our own concerns are upon a safe bottom, nor when we are in health be insensible to the distempers and griefs of our country. He would have us espouse the better and juster cause and hazard everything in defense of it, rather than wait in safety to see which side the victory will incline to."<sup>1</sup> In all marriages except those of heiresses he prohibited the giving of dowries and allowed the bride to bring with her only three suits of clothes and a little household stuff. This included an earthen pan for parching barley, which symbolized her assumption of the charge of the household. The bride and groom were directed to be shut up together and to eat of the same quince. One of the laws forbade men to speak ill of the dead. He also forbade reviling the living in a temple, a court of justice, the general assembly or at the public games. Offenses of this kind were punished by a mulct of three *drachmas* to the person injured and two to the public. He introduced the making of wills, but restricted the right to those dying without children. He restricted extravagance at funerals and prohibited women from tearing themselves, and no hired mourner was allowed to utter lamentable notes or do anything else to excite sorrow. All citizens were required to attend the public entertainments,

<sup>1</sup> 1 Plutarch, p. 185.

but prohibited from going too often. The victor at the Isthmian games was allowed a reward of 100 *drachmas* and at the Olympian 500 *drachmas*. There was a reward of five *drachmas* for catching a he wolf and one for a she wolf, the former being the price of an ox and the latter of a sheep. The full text of Solon's code is not preserved. The fragments above mentioned indicate something of its general tenor. After his laws were promulgated, the senate and *archons* were sworn to observe the laws under penalty of a golden statue as large as life, to be erected at Delphi. This seems to have been the only sanction they received. Having completed his labors, Solon found it too severe a task to defend, construe and explain his own work, and thereupon obtained leave of absence for ten years, during which the laws were to remain unchanged.

Solon's system appears to have been insufficient to prevent internal discord, for after his return the people again divided into much the same factions as before, the mountaineers under Pisistratus, the rich of the plains under Lycurgus and those of the sea coast under Megacles. Pisistratus, under the pretense that he had been assaulted, obtained leave to keep a body guard of fifty armed with clubs. This Solon opposed but without success. Thereafter Pisistratus seized the Acropolis and succeeded in establishing his authority. His dynasty, established 560 B.C., continued fifty years, with two intervals however, during which he was driven into exile. Accounts of his reign and that of his sons are meagre, but concur in asserting that he ruled largely through the forms which Solon had established and with mildness. After Hipparchus, son of Pisistratus, was killed by Harmodius and Aristogiton, the reign of Hippias his brother was harsh and cruel.

For favors received from the Alkmoenids, who had been driven into exile by Pisistratus, in rebuilding the temple, the Delphic oracle played on the superstitious reverence of the Spartans, and in answer to every consultation said, that "Athens must be liberated." The Spartan reverence for the deity supposed to preside at the temple at length caused them to send an army to Athens to drive out the tyrant. The first

expedition proved unsuccessful, but the second accomplished the object and finally expelled the tyrant. This circumstance strongly illustrates the peculiar notions of the Greeks of that day. By this expedition the Spartans merely performed what they deemed the religious duty of liberating their great rival from a tyrant, from which they derived no material advantages, but suffered some losses of men. After the expulsion of the Pisistratids the institutions of Solon, which had not been destroyed but used by them as means for the execution of their purposes, were restored to vitality with modifications introduced by Cleisthenes, who allied himself with the classes which had formerly been excluded wholly or partially from sharing in the exercise of public functions. He extended the right of citizenship, which had been confined to the four Ionic tribes, so as to include all freemen. In order to accomplish this he resorted to a new division into tribes, which disregarded the ancient *gentes* and *phratries*. He divided the whole population of Attica into ten new tribes, each of which included a certain number of *demes* or cantons, in which the proprietors and residents were enrolled. The *demes* assigned to each tribe were not all contiguous, and so a tribe did not occupy a compact territory. This scattering of the members of a tribe and inclusion of all classes of people without regard to the ancient *gentes* tended strongly to unify them. The ancient *gentes* and *phratries* remained as family and religious associations, but without political significance. City *demes* and country were included in the same tribe, and jealousy between city and country thereby avoided. Each *deme* had its local interests, but the tribe as a whole had no interest distinct from that of the state, being merely an aggregate of *demes* for political, military and religious purposes. Each tribe had a chapel, sacred rites and festivals and a common fund for these purposes. The *deme* was the primary political aggregation. It had its *demarch* who kept the register of enrolled citizens, its collective property, its public meetings and religious ceremonies, and its taxes, levied and administered by itself. The registry of citizens was corrected at the public assembly by inscribing the names of the sons of citizens who

had attained the age of eighteen. Sometimes names were expunged from the register, in which case an appeal could be taken. Under the new arrangement the public assembly was greatly increased in numbers, and the membership of the senate was increased from 400 to 500, made up of fifty from each of the ten tribes, chosen annually. About this time the practice began of choosing the senators by lot. The military organization was changed so that ten *strategi*, generals, one from each tribe, were chosen. This did not deprive the *polemarch* of the old constitution of all his power, but the power and influence of the *strategi* steadily increased. A board of ten *Apodektae*, one from each tribe, managed the exchequer. With the revival of popular government the senate at once became a most important body, exercising a general supervision of the affairs of the city. The political year was divided into ten portions called *Prytanies*; the fifty senators of each tribe remaining in constant attendance on the senate by turns during one *prytany*. Each *prytany* was divided into five periods of seven days, and the fifty senators of each tribe into five bodies of ten each. Each body of ten presided in the senate for a period of seven days, choosing by lot one of their number each day for the chairman, who was called *epistates*, and during his day of office held the keys of the Acropolis, the treasury and the city seal. Senators not of the *prytany* might attend all sessions, but were not required to do so, except that one from each tribe was requisite to a valid meeting. The general assembly was convoked either by the senate or the *strategi*. In later times there were four regular sessions during each *prytany* at which the *prytanies* presided, the *epistates* putting all questions to vote.

The exact distribution of judicial power in the time of Cleisthenes cannot be stated, but the whole body of citizens above thirty years of age was convoked to try persons charged with certain public crimes and, when so assembled, bore the name of *Heliosa* or *Heliasts*. Afterward 6,000 citizens over thirty years of age were annually selected by lot, 600 from each tribe. Five thousand of these were distributed into panels or *decuries* of 500 each, the remaining 1,000 being



reserved to fill vacancies. When there were causes ripe for trial, the *Thesmothets* or six inferior *archons* determined by lot, which *decuries* should try and what magistrate should preside. Sometimes two *decuries* sat together. In time the *archons* came to be chosen by lot, and any citizen was eligible, subject however to an examination into his status as a citizen and his moral and religious qualifications. By this time the *archons* had become shorn of much of their power, their principal functions being to hold preliminary examinations, preside at trials and to pass sentence for petty offenses. The *strategi*, however, were chosen, not by chance, but by preference of the citizens manifested by a show of hands. The date of the adoption of universal eligibility to office is fixed as after the battle of Plataea.

The modifications of the constitution of Solon in the time of Cleisthenes stopped short of that full democracy which developed later. The *archons* still retained much judicial power, and the *polemarch* was still a general. They were then elected, not chosen by lot. The fourth class of the census were still excluded from the principal offices. The senate of the Areopagus still retained some of its power, but the popular bodies of the senate of 500 and the general assembly became the dominant forces of the state.

A peculiar institution, ascribed to Cleisthenes, was the ostracism, designed to get rid of the contentions of leaders of rival factions. Before a vote of ostracism could be taken a case was presented to the senate and general assembly. In the sixth *prytany* of the year these bodies debated and determined whether the public welfare required a vote to be taken. If they decided in the affirmative, a day was named, the *agora* was enclosed with a railing with ten entrances for the citizens of each tribe, and ten vessels were provided to receive the votes, which consisted of a shell or potsherd with the name of the person whom the voter desired to banish written on it. At the end of the day the votes were counted, and any person against whom there were 6,000 votes was ostracized. He was allowed ten days to settle his affairs and then required to leave Attica for ten years, but he retained all his property and

suffered no penalty, nor was he deemed disgraced. It was in fact a great distinction to be regarded of so much importance as to require ostracism.

The spread of the Persian empire over Asia Minor brought Greeks and Persians in contact in Ionia and elsewhere, and the demand for submission, which had been enforced on the Greek cities of Asia, was extended to the islands and to Greece. The vast resources of the Persian king and the prestige of the success of Persian arms were such as to cause the king of Macedon and many of the Greek cities, notably Thebes, and when the final conflict came, Thessaly, to submit to the Persian king and reinforce his army. Democratic Athens in its resistance of the foreign despot exhibited in full measure the vigor of a free people fighting for their independence. The battle of Marathon, fought about twenty years after the expulsion of the Pistratids, put an end to the first invasion. Under the leadership of Themistocles the Athenians turned their attention to the sea and began to build ships. The policy of Athens in many particulars stood in strong contrast to that of Sparta. The government of Sparta was nominally monarchical, but in fact an oligarchy, that of Athens a democracy. The Spartans excluded all foreign commerce, the Athenians invited it. The Spartans made war on land their principal business, the Athenians sought material prosperity through peaceful channels, but without neglecting their defense on land and sea. When the invasion under Xerxes came ten years later, the Athenians were prepared with both a fleet and an army. Rather than submit they left Attica and took their families to Troezen, Aegina and Salamis. The fortunate circumstances of the destruction of many of the Persian vessels by storms made Greek victory possible on the water. Nothing better illustrates the peculiarities of the Greeks than their conduct during this war. Want of concert of action and the celebration of religious festivals, deemed of more importance than defense of their country, left Leonidas with his little band to confront the whole Persian host at Thermopylae, and this when the situation was fully understood. The defense made illustrates the extreme of Greek courage and devotion.

The Pan-Hellenic congress, convened on call of Sparta and Athens on the isthmus of Corinth for the purpose of obtaining a union of all the Greeks against the Persians, exhibited strongly the want of harmony among the different cities and their utter inability to unite even in a case of such extreme necessity. Not only did the distant cities in Crete and Sicily fail to respond, but Argos remained neutral, and Thebes and many other cities espoused the Persian side. The dissensions among the leaders, prior to the naval battle of Salamis, would have prevented the great victory that followed but for the artifice of Themistocles, which induced the Persians to hem the Greeks in in the Bay of Salamis and thus prevent the ships of the different cities from scattering. The characteristic wrangling and dissension among the leaders while considering the course to be pursued, was followed by the no less characteristic skill, bravery and determination with which the great battle was won. The battle of Plataea found Greek confronting Greek, but with a marked difference of spirit. Those in the Persian army were hardly a source of strength to it, except perhaps the Thebans, but the spirit of those who defended their country was worthy of all admiration.

Though Athens had been burned and Attica laid waste, the people returned victorious, with a purpose and a system that soon made Athens the leading city of the Greek world. The development of Athens was not unilateral but multiform. Each citizen was not merely invited but required to take an interest in public affairs and assume his share of responsibility for the public welfare. All avenues for advancement were open to each citizen. After the battle of Salamis the fourth and most numerous order of citizens, who under the constitution of Solon were ineligible to office, were admitted to the same privileges as the other three classes. The contact of Greeks with Persians exposed the former, not merely to the force of the great despotism, but to the insidious influences of the corrupt system. The leading citizens in the Greek cities were approached by Persian agents with offers of bribes, in some cases of money, in others of establishment in power under Persian protection, and it is a melancholy fact that, even

after the great victories of Salamis and Plataea, Themistocles, to whom more than to any one else was due the naval victory, and Pausanius, the Spartan commander-in-chief at the great battle, were corrupted by Persian bribes and died in disgrace. Miltiades, the commander at Marathon, fell in a somewhat different manner. Having induced the Athenians to place him in charge of an expedition, he diverted it to an attack on the people of the island of Paros for his own personal ends. He was repulsed and in his attempt to get away received injuries which disabled him. On his return to Athens he was brought to trial for his misconduct and condemned to pay a fine of fifty talents; the jurors refusing to pass the death sentence because of his great services. That the Athenians were able to condemn and punish such a man at such a time indicates most superior integrity in their institutions. The corruption of Themistocles led to his ostracism about nine years after the great victory. At Sparta the treason of Pausanius, who had long been in corrupt and treasonable correspondence with the Persian king, was not readily believed by the *ephors*, and it was only after the clearest proof of his treason, that an attempt was made to bring him to trial. When the *ephors* attempted to arrest him he took sanctuary in the temple of Athene Chalcioecus, where he was confined till at the point of starvation, when he was removed to die where he would not desecrate the temple. Notwithstanding the Spartan contempt of money Pausanius received much Persian gold and was ruined by it.

Prior to and during the Persian invasion Sparta had been allowed first place in joint undertakings of the Greek cities, and a Spartan general commanded at Plataea and a Spartan admiral at Salamis, notwithstanding the great superiority of the Athenian fleet. After the Persians retired and the Greeks followed them to Cyprus and Byzantium the Spartan Pausanius was still in command. The traitorous correspondence of Pausanius with Xerxes occasioned his recall to Sparta for trial, and in his absence command of the Greek forces passed to the Athenians. This led to the formation of a confederacy with Athens at its head, for the protection of the Greek cities

against Persia about 477 B.C. The leading spirit in the formation of this confederacy was the Athenian Aristides. The terms and purposes of the confederacy and its general policy were determined by a synod of representatives of the cities, which convened at the temple of Apollo at Delos. As the head of this confederacy Athens at once took a prominence never before attained. It was a confederacy, designed not merely to protect the cities on the mainland of Greece and the islands of the Aegean sea, but also those on the coast of Asia Minor and Thrace as well. From this time till the breaking out of the Peloponnesian war the power and commerce of Athens grew rapidly. The yearly contributions of the allies in time were largely changed from ships and men to payments of money, which Athens received. The voluntary character of these contributions also disappeared, little by little, and payment by the delinquents was compelled by Athens by force.

In the time of Pericles great modifications of the governmental system were made, and the *archons* and various other magistrates were chosen by lot. The senate of the Areopagus had exclusive judicial power, not clearly defined, and also exercised censorship over the habits of the citizens and supervision over the proceedings of the public assembly to prevent infringements of the established law. These powers were based on a foundation of long usage and liable to great abuse. They were greatly curtailed, leaving only power to try certain cases of homicide and to impose small fines for minor offences. The main judicial power was transferred to the popular *dikasts* in both civil and criminal causes. A very common method of trial was by arbitration, and a number of public arbitrators were annually appointed, to whom or others chosen by the parties, all private disputes were submitted in the first instance. If dissatisfied with their decision either party might carry the case before a *dikast*. The regular number of a panel seems to have been 500, but for important causes more were sometimes taken, and it seems that less sometimes sat. These jurors during and after the time of Pericles were paid a small sum per diem out of the public treasury while serving. At about the same time the indi-

vidual magistrates and the Senate of 500 were deprived of all judicial attributes except to assess small fines, and the laws of Solon were brought down from the Acropolis to the neighborhood of the market. The final and efficient judicial power was thus vested in a numerous body of common citizens, and this was done mainly for the purpose of obviating the bribery to which single or a small number of officials might be subjected: the Greeks of that time exhibiting a marked weakness of character when tempted by money.

A general power of supervision over the magistrates and over the general assembly was vested in seven magistrates called *Nemophylakes*, who sat along with the presidents of the senate and assembly, and whose duty it was to interpose whenever any step was taken or proposition made contrary to law. It was the duty of the *Thesmothetae* annually to examine the existing laws and make note of any that conflicted, and in the first *prytany* of the Attic year on the eleventh day an assembly was held, at which the first business was to go through the laws *seriatim* and submit them for approval or rejection. If a law was condemned by a vote of the assembly, or if any citizen had a new law to propose, the third assembly of the *prytany* appointed 500 to 1,000 *Nomothetae* from among the 6,000 dikasts to consider the proposed change. Previous notice was required to be given by a citizen having a new law to propose, in order that the time necessary for the sitting of the *Nomothetae* might be measured according to the number of matters to be submitted to their consideration. Public paid advocates were named to defend the existing law, and the mover of a repeal was required to make out his case before the *Nomothetae*. The power to enact laws, except a decree applicable to a single case, was thus taken away from the general assembly. A very peculiar provision was that by which the author of a new law was liable to indictment, trial and punishment, where the new enactment contradicted a law already in existence without expressly repealing it, or where it was otherwise defective or mischievous. If the dikastery before whom the author was tried found him guilty, it had the effect of repeal-

ing the new law. The punishment inflicted in this, like some other classes of cases, was variable. The prosecutor might propose a sentence and the accused might also propose one. The dikastery then adopted either one or the other without change. If the accused was acquitted, the accuser was liable to a fine of 1,000 *drachmas*, unless one-fifth of the *dikasts* voted for conviction. The author of the law could not be punished if the prosecution was instituted after the expiration of a year, but the law itself might be condemned and thus repealed. Publicity, opportunity to produce evidence and to be fully heard in argument were characteristic of Athenian trials. The number of the jury and modes of trial are generally regarded as affording undue weight to oratory, but no ancient system is known to us which on the whole worked so fairly. Freedom of speech on all matters of public interest is a strong proof of the vigor of the democracy.

The internal system as perfected in the time of Pericles continued without great change until the Macedonian conquest, but the situation of the members of the Athenian defensive league gradually changed, so that in time all but a few of the strongest were regarded as Athenian dependencies. They were compelled to pay their yearly tribute, which was kept at Athens instead of Delphos. The synod, which at first determined the course to be pursued in matters affecting the public interest, ceased to exercise any authority, and all questions were determined at Athens. Toward her new colonies, as well as the weaker members of the confederacy, Athens assumed imperial powers. Disputes between her dependencies or their citizens with citizens of Athens were brought before the Athenian *dikasts* for trial. While this in theory opened to all the same forum that the Athenian citizens were bound to resort to in contests with each other, in practice it must have imposed hardships on suitors residing at a great distance as well on the score of expense as of want of familiarity with procedure and inability to prove the facts. The excellence of the domestic institutions of the head of the confederacy could not render palatable arbitrary dictation to the dependencies. Hostility against Athens grew up in the subject cities and

increased in strength as the fear of a Persian despotism grew less. The wonderful growth of the democratic city under the leadership of Pericles, its commerce, its ships, its wealth in public treasuries and buildings and its brilliance in all lines of culture and intellectual development, excited the jealousy of rival cities and discontent among its dependencies. With the growth of Athens and its allied cities, which maintained systems of government democratic in their essential features, the Spartan leadership was also extended among the oligarchical cities. Though at all periods there were frequent wars and much fighting among the independent cities, the numbers involved in the conflict were not so great as to prevent the increase of population and wealth until the breaking out of the Peloponnesian war. Sparta and her allies on one side and Athens and hers on the other, in 431 B.C., entered on a struggle for mastery, which involved substantially all the Greeks of the mainland, the islands and the coast of Asia. The struggle became so fierce that each party in turn sought aid from the Persians, and leaders on both sides were corrupted by Persian bribes. The simplicity of manners of the Spartans gave way when brought in frequent contact with the orientals, and their generals were found no more proof against bribery than those of other cities. The social system, however, remained throughout the struggle substantially unchanged. The Athenian democracy, notwithstanding the unwise and most disastrous expedition to Sicily, manifested most wonderful energy and resourcefulness, and the integrity of its institutions was maintained till 411 B.C. when a conspiracy of the oligarchical elements resulted in the rulership of a senate of 400 for a few months. This being soon overturned, the democratic institutions were again restored, and under them the people manifested renewed vigor and devotion to the public welfare. The surrender of the city in 404 B.C. was followed by the establishment of an oligarchy of thirty, the spirit of whose rule was in marked contrast to that of the democracy. Though in the trial of the generals after the battle of Aegospotami there was a departure from legal forms, and the generals were condemned to death without a



regular trial, they still had a hearing before the assembly and were condemned by a vote of the people by tribes. The thirty, however, ordered summary executions without trial, and proceeded to get rid of such of the people as they feared. Their tyranny was in striking contrast to the formal, free and orderly administration of established laws by the magistrates and dikasts. Though their authority was established with the sanction of the victor in the long and desperate struggle, its exercise was so utterly at variance with the prejudices and feelings of the people, even of their own partisans, that in the following year they were driven out under the leadership of the returning exiles, and the democracy was restored. While the Peloponnesian war was waged on the part of Sparta to destroy the power of a hated rival, it must ever stand to the credit of the victor that, instead of the destruction of the city after its surrender, after the destruction of its walls, the city was left uninjured, notwithstanding the demand of some of the allies that it be destroyed and its people scattered. The course of Sparta in this respect was in strict accord with the principle of the Delphic Amphictyonic league, which tended to mitigate the horrors of war among different Greek cities and prohibited the destruction of a conquered city. This league, religious in character, seems to have succeeded in promulgating, and enforcing in a great number of instances, humane principles mitigating the horrors of war. It was only in holy wars, waged against members of the league charged with some sacrilege, that these humane principles were cast aside and barbaric destruction inflicted without restraint.

From the close of the Peloponnesian war to the rise of the Macedonian power was a period of frequent wars and varying combinations. Thebes, the ancient enemy of Athens and frequent ally of Sparta, under the lead of Epaminondas finally terminated the power of Sparta at the battle of Leuctra. The Persian practice of hiring mercenary troops became prevalent with Greek cities, which now relied on money rather than on the devotion of their citizens for offensive and defensive operations. War, instead of being the exercise of patriotic

devotion, became a profession, and mercenary bands, fighting for whomever would pay, became numerous. The ancient spirit, so much admired in subsequent ages, decayed. Greece was still the land of culture, but not of incorruptible heroes.

In this condition the arts and arms of Philip easily placed him at the head of the Hellenic world. Though neither he nor his son Alexander claimed despotic powers over the Greek cities, both were typical tyrants, recognizing no restraints. At the convention of deputies held at Corinth 330 B.C. Alexander was appointed commander of the Greeks for the purpose of prosecuting war against Persia. By the terms of the agreement then made the freedom and autonomy of each Greek city was recognized, and its existing constitution was guaranteed. Violence of one against another was prohibited and freedom of commerce guaranteed. Sparta of all the leading cities appears to have been the only one which did not join. Though this convention effectually bound the cities to Alexander, it utterly failed to place effectual restraint on him, for it provided for the admission into the cities of Macedonian troops, ostensibly to enforce obedience to the terms of the agreement. Protests against his tyrannies were unavailing. The revolt of Thebes was followed by its capture and the massacre of its people, including women and children, and the destruction of the city. The severity of the treatment was in accordance with the wishes of the Greek auxiliaries of Alexander's army. With the ascendancy of Alexander the independence of Greek cities ended, and the peculiar political conditions under which the people had progressed so rapidly in intellectual development, in literature, philosophy, arts and sciences came to an end, but Greek culture endured and was diffused over Asia by the armies of Alexander and his successors, and over Europe under the subsequent empire of Rome.

No equal number of people in an equal period of time have left so many evidences of intellectual activity as the Greeks from the foundation of Sparta to the time of Alexander. At this day the names of illustrious Greeks of this period are familiar in greater number to the people of Europe and Amer-

ica than those of any other country at any time, with the exception, perhaps, of Rome when at its zenith of power. But the intellectual activity of Greece was far more diverse and extended over a far wider range than that of Rome.

The Greeks developed the idea of determining controversies by laws declared in advance of the fact and by an impartial tribunal acting on evidence adduced at a public trial with the right to a full hearing in argument on the facts and the law. Individuality and self-reliance were the leading characteristics of the people. Religion and government, though not wholly disconnected, were not merged or confused. The same gods were worshipped by the Greeks of many cities, wholly independent of each other, and the bonds of common religion were always much wider than those of any governmental system. Though the religious sentiment was strong, it was in the main disconnected from political sentiment, and the laws passed were based on views of justice and policy rather than on religious sanction.

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## CHAPTER XIV

### ROME

The most ancient people of Italy of whom we have any information were in substantially the same stage of development as the earliest Greeks known to us. They tended flocks and herds and cultivated the soil. They had implements of iron and woven clothing. The relations of the members of a family were clearly defined, and the social organization developed from the germ of the household. Written history does not begin till centuries after the foundation of Rome, and what is known of the earliest days of the city comes through tradition and the evidence of the works which endured till letters were introduced. The mythical tale of Romulus and Remus no longer finds believers, and the easy and definite description of the foundation of the city is now impossible. At the time of the first settlements from which the city developed, we fail to find evidences of any social organization which included large numbers of people or extended over a considerable district. Apparently there was no government more comprehensive than that of a clan, and the authority exercised was paternal in character. Rome grew from the clans settled on and about the Palatine hill. The city took more distinct form and character when the walls were constructed on this hill. A discussion of the combination of Latin, Sabine and Etruscan elements to form the city would serve no purpose here. We must start with a considerable aggregation of people, including those following urban pursuits as well as herdsmen and cultivators of the soil.

The social organization of the clans did not disappear with the growth of the city, but the early structure formed the basis in this as in most states of that which followed. Though the monogamous family with the rights and duties of each member clearly defined is the product of an advanced social

stage, it not only existed at Rome in the earliest days, but was the most clearly marked feature of society, and furnished the basis of the governmental system. The free family was the social unit. It consisted of a father, who was his own master, a wife whom he had wedded by the priestly ceremony of *confarreatio*, their sons and sons' sons and their lawfully wedded wives and unmarried daughters. It did not include the children of a daughter, for if she were married they belonged to the family of her husband, and if not they had no place in the family. All the property of the family, including the slaves, belonged to the man at its head. The power of the father in his household was absolute and continued till death. He could punish wife and descendants even with death. The women of the family were not in fact treated as slaves, however, but within the household were its mistresses. Sons with families might be allowed to manage a separate property, but in law it belonged to the father. A father might even sell his son as a slave to a foreigner. As a Roman he could not be a slave in law to a Roman, though he might be so in effect. While the father was under no legal restraint in dealing with his family, he was subject to religious anathema in case of gross abuse of his authority. From the family the gens or clan developed, and these were distinguished one from the other only by ability to trace definitely the relationship. Those whose descent could be definitely traced to a common ancestor belonged to the family. Those who merely bore the family name but could not give the chain of descent belonged to the gens. Attached to the patrician houses there was a class of dependents, called clients, who sought the protection of the house. The relation of the client was intermediate between that of the slave and the free man. He was in the power of the patron, who afforded him ground to till or other means of livelihood, appeared for him in any litigation and obtained redress for wrongs committed against him. These *clientes* were regarded as part of the *familia* and were legally subject to the will of the father, who might, if he chose, exercise the same absolute power over them and their property as over the rest of the family. The father

was the religious head of the household and conducted the family rites. While the sons in patrician families were in all personal affairs subject to the absolute power of the father, they were citizens of the state and as such had equal political privileges and duties.

Outside the patrician families were the *plebs*, who were protected by the state but had no share in public affairs. The Roman people included three original tribes, the Romnes, Tities and Luceres, and these were divided into thirty *curiae*. The *curia* was the primary association with its common *sacra*, priests, festivals, chapel and hearth. The tribal division does not appear of special importance in the constitution of the state, but the *curiae* formed the basis of the system. Just when and how they first developed is unknown, but the first view discloses them as including not merely persons related by blood or marriage, but persons not belonging to the gentile families, with membership based largely on occupancy of contiguous lands included within the territory of the *curiae*. There was great liberality in the admission of citizens of friendly communities, who might be granted the right of citizenship by the *comitia* on renouncing membership of their native city, otherwise they were regarded rather as guests under protection of the community.

At the head of the earliest Rome was the king, who stood as father of the city with powers corresponding to those exercised by the father over the gentile family. He was the leader in war and in peace, and the religious head of the state. His powers, like those of the patrician, were absolute in theory, yet restrained by custom and public sentiment. He was chosen from among the fathers and held office for life. He consulted the gods for the public and named the priests and priestesses. He made treaties of peace which bound the community. He alone had the right to address the citizens in their public assemblies, or to name others to do so. He kept the keys to the public treasury, and near his dwelling was the blazing hearth of Vesta and the storehouse of the community. He was judge of the people in all causes civil and criminal and imposed such penalties as he saw fit. From

a sentence of death he might allow an appeal to the people for pardon, but was not bound to do so. He had the right to levy taxes and call out the military force. While he might appoint subordinate officers and even a viceroy to rule in his absence, all such served subject to his pleasure. He might nominate his successor, who was confirmed by the freemen in a public assembly convoked for the purpose. In case of the death of the king without naming a successor the senators, (*patres*), met and named an *interrex* from their number, who ruled not more than five days. He then named a successor according to an order of succession fixed by lot for a like term. This second *interrex* might then name a successor for life. The king thus named was then accepted in the public assembly by the citizens old enough to bear arms and afterward confirmed by the senate. When the people were assembled at the summons of the king to decide on any public matter, they met in the *comitium* at the north end of the *forum* and were presided over by the king or *interrex* who put the questions. Each *curia* voted separately, a majority determining its vote, and a majority of the *curiae* decided the question. While they had no power to pass laws or restrain the power of the king, the disposition of property by will or the renunciation of family or gentile *sacra* could only take place in the public assembly, and adoption into the family required their assent as well as presence. The senate was made up of fathers of the gentile houses, but did not include all of them. The general theory of the organization of the state was that each of the tribes was divided into ten *curiae*, that a *curia* included ten clans or one hundred households, and that each household furnished a foot soldier, each clan a horseman and a senator. The ten *curiae* of each tribe furnished one hundred senators, or three hundred in all. While the number of clans and households is thus definitely stated, they could not in the nature of things remain constant, and the numbers given may not be accurate for any date, but the *curiae* were definite divisions of the state and continued as political units. Each *curia* had its warden (*curio*), and its priest (*flamen curialis*). Vacancies in the senate were filled

by appointment of the king. The powers of the primitive senate are not readily comprehended. As the heads of their families they were the chief men of the state, each ruling his own family, slaves and clients. Collectively their governmental functions appear very limited, except in the matter of providing a king, yet they held a veto on changes in the constitution of the state proposed to the assembly by the king and adopted by it. Though there was no written constitution, the senate in a negative manner by its veto might declare what the fundamental law was. In theory the king was absolute, yet the organization of society was such that despotic powers were denied him. The citizens were by no means slaves to the king, but rather his equals, from whose number he had been chosen. He held his office under no claim of divine right but of regular selection. The vigor of the unwritten constitution was due to the spirit and moral influence of the monogamous Roman families, and the need of the king for the counsel and support of the citizens in the assembly and the senators in council. The king had his subordinates to execute his commands, but the military power of the state rested in the body of citizens, who were soldiers only on emergency, and the senate might veto a war of aggression. Though in theory the powers of the senate in its earliest days were exceedingly limited, the influence of such a body of men must always have been great, and subsequent history demonstrates how that influence developed into recognized authority.

In dealing with the earliest constitution of Rome we are forced to rely much on inferences deduced from the state of society at later periods, when we have a clearer and more authentic view of it, and on traditions passed down from earlier times. The division of the people into the patrician families with their clients and slaves and *plebs*, who were yet not citizens nor slaves, is explained on the theory that the patricians were of the stock of the earliest founders of the community and that others, brought in from conquered districts or voluntarily settling in the city, were protected by the state though given no share in public affairs. The ranks of the *plebs* were also augmented by manumitted slaves and



clients and their descendants, who became detached from the households of their patrons. As in the earliest times the warriors were taken from the citizens only, the numbers of the *plebs*, who were allowed to have families and acquire property, increased much more rapidly than those of the patrician stock. Though in our day great stress is laid on the efficacy of written constitutions and formal legislative enactments, the early history of Rome exhibits in a striking manner how accepted principles may govern effectually without any written constitution or laws, and how a government may be in form and theory despotic, yet effectually curbed in many ways. The real living law is that which is generally observed and enforced, rather than that which, though promulgated by the recognized law-making power, is yet disregarded in actual practice.

The rules which the Romans recognized as authoritative were classified under the heads of *fas*, which was conceived to be the laws promulgated by the gods, *jus*, which signified established human customs and regulations, and *boni mores*, which expressed the general public sentiment with reference to personal conduct. *Fas*, which was accepted as the will of the gods, regulated religious ceremonials, which constituted a most important element in both public and domestic life. It went much farther, however, and furnished precepts regarded as binding, not merely on the people of the state in their intercourse with each other, but on all mankind. It forbade war without the prescribed ceremonial, through which the gods were supposed to be consulted. It enjoined faith to be kept with enemies, when under sanction of an oath, and hospitality to foreigners. It punished murder; the sale of a wife by her husband; the resistance by children of the authority of their parents; incestuous connections; false oaths and broken vows; and the displacement of boundaries and landmarks. All these were regarded as offenses against the sacred ordinances of the gods. For minor offences expiation was allowed, but for the graver ones the heavy penalty of excommunication was imposed. The outlaw—*homo sacer*—was an outcast with whom it was pollution to associate, who could

take no part in public affairs, civil or religious, and whom any one might kill with impunity. *Jus* was based mainly on long established customs, recognized as binding, and in the early days only to a small extent on rules proposed by the king and adopted by the people in the assembly of the *curiae*. *Boni mores* related to the demeanor and obedience of inferiors to superiors, chastity, fidelity to engagements and the like, and were enforced by the *pater familias*, the elders of the *gens* and the king.

With the early Romans marriage was a solemn religious duty. The happiness of the dead in a future state was believed to depend on the due observance of funeral obsequies and other rites for the good of their souls, which could only be performed by descendants of the deceased. The choice of the man was limited to a woman with whom he had a right of intermarriage. The wife of a patrician must be either the daughter of a patrician or a woman of an allied community. In taking her as his wife he detached her from her family and its household gods, to become a part of his family and under the hand of the head of the household. This must be done with the approval of the gods, consulted through *auspicia*. The ceremony was a religious one, conducted by the high priest in presence of ten witnesses representing the ten *curiae* of the bridegroom's tribe, and was called *confarreatio*. By this ceremony she and all her property passed *in manum*, under the hand of the head of her husband's home, and thenceforth she and all that came with her were his property. The religious feelings of the heads of Roman families were such that the theory of the despotic rights of the father was productive of little if any evil. The father was dependent on the son for those religious offices which were so highly esteemed, and mutual dependence as well as natural affection seem to have made the early Roman families high types of domestic circles. In case of the unfortunate failure of issue or loss of all sons, threatening the extinction of the family, the father might provide for its perpetuation by adrogation or adoption. By the former the *pater familias* of another household was transferred to become the son of the adrogator

and thereby permitted his own family to be nominally extinguished. This could only be done with the approval of the pontiffs and the sanction of the *curiae*. The adrogatee and all his family and property passed under the power of the adrogator. In case of the adoption of the son of another *pater familias* the form was more simple, requiring the consent of the father of the adopted son. The *plebs* contracted marriages by consent, but were incapable of the religious ceremony of *confarreatio* with its legal consequences, nor were they allowed to perpetuate their families by adrogation and probably not by adoption.

In the earliest times there was private tenure of land, but there were also public lands belonging to the state. To what extent lands were held in common by the clans, if at all, cannot be stated. The *plebs* were allowed to acquire and hold land as well as the patricians. The law of inheritance gave the property of the deceased to his children and widow equally, sons and daughters sharing alike, except that a daughter, married and thus a member of her husband's family, had no share. This equality was materially modified however by the guardianship under which the widow and unmarried daughters passed, exercised by their nearest male relation; thus the sons became guardians of their mother and sisters. In default of widow and children the inheritance went to the *gens*. The succession might be changed by a testament, executed in the assembly of the *curiae*, or in the presence of comrades on the eve of battle. Among the *plebs* the inheritance passed to the children, but in the earliest times not to collateral relations, and they were without legal capacity to make a will.

In the earliest days money was not in use, and there was hardly such a thing as the law of contracts in the modern sense. As in most primitive communities, possession and ownership were usually concomitant, and for invasion of his possession the owner usually asserted his rights in person. The dividing line between private wrongs and public offenses was not clearly drawn. The tendency was to confuse them and treat all matters brought before the judge as of a crimi-

nal character. Nor was the punishment of crime exclusively the province of the king or judge. In case of murder it was the kinsman of the person murdered who avenged his death. So too the husband or father might kill wife or daughter and her paramour caught in adultery on the spot, but if he delayed till his blood cooled he could then proceed only in his domestic tribunal.

The early procedure was simple: the accused on trial for a criminal offence or the parties to a private suit came before the king at the judgment platform. He was attended by his *lictors* (messengers). The facts were ascertained by the confessions of parties and the testimony of witnesses without the use of torture, except on slaves. Among capital offences were treason, violent sedition, parricide, wilful murder, sodomy, violation of a maiden, arson, perjury, carrying away the harvest by witchcraft and unlawfully cutting the corn in the sacred fields by night. The king might hear and pronounce judgment alone or on consultation with advising senators, or might depute the power to others. There were trackers of murder, *quaestores parricidii*, whose duty it was to arrest murderers. The mode of inflicting the death sentence was by throwing down from the capitol hill, hanging, burning or drowning. Pardon could only be granted by the people on an appeal to them, which the king was at liberty to allow or refuse. The culprit's life was spared, if on his way to execution he accidentally met one of the vestal virgins. For minor offences fines of cattle were imposed or the culprit was scourged. For serious injuries the wronged party was entitled to retaliation, eye for eye, etc. For thefts and other injuries to person or property compensation was usually awarded.

Under Servius Tullius important changes were made in the organization of the state. These, though induced mainly by military considerations, had a most important influence in later years on the civil institutions, and on the relations of the *plebs* and patricians. A census was taken, registering the citizens with the numbers in their families, and showing the value of their lands and holdings. This census was revised

periodically. Transfers of lands to be recognized were required to be made publicly under certain forms or by surrender in a court before the supreme magistrate. This form of conveyance was called *mancipium* and continued in use till the time of Justinian. All freeholders from seventeen to sixty years old, whether patricians or *plebs*, were equally liable to military duty and were divided into centuries, classes and tribes without reference to the old divisions. The century of one hundred men became the unit, and the centuries were arranged in classes, the front rank including the wealthier and therefore best armed class, the second and third of the grades below and the fourth and fifth made up of the poorer citizens, who served as light armed troops. The cavalry was similarly dealt with and drawn from the most opulent citizens. Old men, unmarried women and boys holding land, were required to contribute equipments and fodder for certain ones. Non-freeholders had to supply workmen and musicians for the army, as well as substitutes, who marched with the army and took the places made vacant in the ranks by illness, death or other cause. For the purpose of making the levy the city and its suburbs were divided into four parts, superseding the old triple division. Each quarter contributed equally one-fourth part of the whole and of each of its military subdivisions, so that each legion and century was made up from all four parts. The whole military population was divided into a first and second levy, the first or juniors including those from the seventeenth to the forty-sixth year, who were usually the active force, while the seniors acted as home guards. The military unit was the legion of 3,000 men in six ranks, to which were attached 1,200 unarmed *velites*. The normal force consisted of 16,800 men in the infantry and 1,800 horse. From the time of this reorganization it was the centuries whose consent the king asked before waging a war of aggression, instead of the assembled patricians, and the centuries who authorized the testaments of soldiers before going into battle. Political power thus came to be exercised by the *plebs* as a natural sequence of their assuming the burden of military service. At the time of these changes the

population and territory of the city had been increased, and included probably not less than 100,000 people. From the earliest days the leading characteristic of the Roman state was its military spirit and superior organization for war. Another regulation of Servius, which continued in effect till the time of Justinian, was that which prescribed the mode of transferring the title to lands, houses, rights of way, aqueducts, slaves and domestic beasts of burden, which were styled *res Mancipi*. The transfer was required to be made in presence of five citizens as witnesses and a *libripens* holding a pair of scales. The vendee, with one hand on the thing purchased or a symbol of it, declared it his by purchase with a piece of money which he held in the other hand, and with which he struck the scales and then handed it to the seller as symbolical of the price paid. The actual weighing out of the copper before coined money was used, or payment of the whole price in later times, does not seem to have required the presence of witnesses. This mode of transfer, called *mancipation*, was primarily established in connection with the census, in order that the ownership of property might be definitely established and the classification of citizens based on it secured against errors. Other forms of property classed as *res nec Mancipi* could be sold and title given by delivery, but a full title to *res Mancipi* could only be given by this formal transfer or surrender in court. A similar formality was soon adapted to other forms of contract including emancipation, coemption and plebian alienation *mortis causa*.

While the date of the foundation of Rome is generally fixed about 753 B.C. there seems but little on which to base any definite statement about it. The kingly form of government continued till the reign of Tarquin the Proud, who was expelled with all his clan by the Roman people because of his tyrannies. This occurred about the close of the sixth century B.C. The wars waged by him to recover the throne ended with the battle of Lake Regillus, which is said to have occurred in the year 497 B.C. and to be the first authentic date in Roman history. However this may be, the fact of expulsion is undoubted, and that the people had become so thoroughly

disgusted with kingly rule that they swore that no king should ever again rule in Rome. The title of king was retained for the high priest, *rex sacrorum*, who succeeded only to some of the religious functions of the former kings. In place of a single king two consuls were chosen, to hold office jointly for a single year. They were elected by the citizens in the assembly, *comitia*, of the centuries from among the patricians, formally invested with authority by a vote of the *curiae* and confirmed by the senate. Under the new constitution laws were first proposed to the *comitia* of the centuries, and, if adopted, were in like manner approved by the *curiae* and the senate. The consuls succeeded to the temporal power of the kings, and each of them possessed these rights in full and became a check on the other. While the plebeians thus became admitted to a share in naming the consuls and making the laws, the actual direction of affairs was still in the hands of the patricians, who presided in the *comitia*, and from whose ranks the consuls must be taken. The right of appeal from capital sentences and sentences to corporal punishment otherwise than by martial law was no longer left optional, as under the kings, but was made absolute. While the consuls succeeded to the judicial powers of the kings, they were subject to restrictions. Causes were commenced before the consuls, but in civil cases and murders prosecuted by the *quaestors* the consul was required to commit to trial before deputies appointed by him.

The consuls did not succeed to the power of nominating the priests, but the college of priests filled vacancies in their own ranks and also named the vestals and single priests and named a president, the *Pontifex maximus*. In extraordinary emergencies either consul had power to name a dictator, who exercised the full power of both consuls, but his powers ceased at the end of the consulate and could not continue for a period of over six months. In war he commanded the infantry and was bound to name a master of the horse, who held for a like term.

The king, holding for life, had been above accountability for any of his acts, but the consuls after the expiration of

their terms of office were subject to trial for offences committed against the law as other citizens. The old privilege of the king, to have his fields cultivated by task work of the citizens and protected dwellers in the city, ceased on the termination of life tenure. With the change in the constitution the power of the citizens enrolled for military service was further increased, and the assembly of the centuries became the most potent political body in the state. A change also took place in the *curiae*, which thereafter included all free-men of the city, slaves and citizens of other communities who stood in the situation of guest of the city being the only classes excluded.

The senate retained in the main its former powers and composition, but was no longer made up exclusively from the patrician order. Plebeians were admitted under the name *conscripti*, not however with full rights as senators. The consuls while in office had no vote in the senate. They filled vacancies whether from among the *patres* or the plebeian *conscripti*, the whole number of both still remaining 300. It became the custom to revise the roll on taking the census, which occurred every fourth year. The patricians still retained the exclusive eligibility to the consulate and civil magistracies, as well as the priesthood, and the privilege of joint use of the public pastures. The practice, commonly followed under the regal constitution, of consulting the senate on matters to be proposed in the assembly, became a settled custom, and the senate also gained a most important power by taking away from the consuls the control of the public treasury and putting it in charge of two subordinate magistrates nominated by the consuls. The expenditure of the public moneys could only be made with the consent of the senate. On the whole the position of the senate was strengthened at the expense of the executive head, but the plebeians also gained advantages. The development should not be looked at from the narrow standpoint of advantage to one class or the other. Rome was a growing power, and the elements of which it was composed were asserting their strength, not merely in the interests of their respective classes, but for the advance-



ment of the whole. Among the regulations favorable to the poor were reductions of the port dues on grain and intervention of the state to secure corn and salt for the multitude at reasonable prices through state monopoly. A singular regulation with reference to fines was that which prohibited a magistrate from fining the same man on the same day to the extent of more than two sheep or thirty oxen without granting leave to appeal; thus apparently placing the poor shepherd and the rich herdsman somewhat on an equality in this particular.

In the collection and disposition of the public funds the system of farming the revenue was adopted, by which a collector paid a fixed sum to the state and collected in his own interest from the people. Public works were also carried on through contractors, who made large profits on the labor employed. The use of the public lands for grazing purposes was claimed by the patricians as their right, to a share in which however some wealthy plebeians were admitted. This had been subject to the payment of a moderate tax, but the collection of this by the patrician quaestors was gradually omitted. When new domains were acquired, it had been the custom to assign the tillable land to the poorer people, retaining the rest for pasture. A system grew up of allowing an occupant to take possession for an undefined term, subject to the payment of one-tenth the grain and one-fifth the oil and wine. This system of occupation was allowed indefinite extension, and naturally inured entirely to the benefit of the ruling classes, and the collection of the state's share was also soon neglected. The wealthy citizens became farmers on a large scale. Small land owners, who were heavily burdened with taxation, fell in debt and under the power of their creditors, which was greatly abused. On their return from a successful war under the dictatorship of Marcus Valerius the poor landholders, who constituted the strength of the army, demanded mitigation of the rigor with which creditors enforced their demands and other reforms in the government, and refused to disband until their rights were secured. The senate at first refused. The army under leadership of the

military tribunes went into camp between the Tiber and the Aino and threatened to establish there a city of their own. An agreement was finally made granting temporary relief to the debtors and providing for some of the poor farmers in colonies that were established, but the most important concession was that which placed by the side of the two patrician consuls two plebeian tribunes, elected by the plebeians assembled in curies. The tribunes were given the power to nullify the commands of the consuls by a protest properly tendered. The tribunes also were given jurisdiction to try and determine criminal causes, and in case of an appeal from their decision the right to defend it before the people. They also had the important power of assembling and addressing the people and submitting resolutions for their adoption. The tribunes could not prevent the other magistrates from pronouncing sentence, the senate from adopting a decree, or the centuries from giving their votes, but they could discharge the debtor from arrest and exempt the citizen from enforced military service. That the aid of the tribunes might be always accessible, they were prohibited from spending a night out of the city and required to leave their doors open day and night. They could summon any citizen before them for trial, even a consul in office. Their process was served by two *aediles* appointed to attend them; and they were aided by ten men for lawsuits, whose precise powers cannot be stated. An appeal from the judgment of a tribune went, not to the whole body of citizens, but to the whole body of plebeians, who met and voted by curies. Only against a dictator were the tribunes powerless to interpose. As might readily be foreseen this arrangement invited conflict of authority and tended to violence when partisan spirit was high. The tribune Gnaeus Gemicus, who had called the two consuls to account, was found murdered in his bed on the day fixed for the impeachment. This circumstance led to the passage of the Publilian law, which provided for a plebeian assembly of tribes and the plebiscitum. The *plebs* had theretofore adopted resolutions by curies, voting man by man without distinction of estate, and, as the clients of the patricians were entitled to vote in these, the

influence of the patrician clans was often controlling. The Roman territory was now divided into twenty-one districts designated as tribes, but with fixed territorial boundaries. In the tribes the voters were the plebeian freeholders only, each of whom had one vote, no matter what the extent of his holding. Thus the patricians and residents who were not freeholders were excluded. The enactments of these meetings, when previously approved by the senate, had the force of law and were of equal validity with those adopted by the centuries. After much contention and many proposals of reform, about the year 454 B.C. a Decemvirate was established in place of the consuls, to which plebeians as well as patricians were eligible, and the tribunate was suspended for the time. An embassy was sent to Greece to obtain the laws of Solon, and after their return the decemvirs were chosen, all of whom were patricians. The purpose of the decemvirate was to establish a written code of laws for the protection of the people against arbitrary and discretionary power. As this code was not completed within the term of the first members, a second set was chosen, including some plebeians. The product of the labors of these officials was the first ten of the famed XII tables of the Roman law. Others were chosen the following year, who added the other two, all of which were duly ratified by the people and engraved on tables of copper and affixed in the Forum to the rostra in front of the senate house. This famous code is preserved to us only in fragments, gathered here and there from the writings of men of later times. A summary of them is given in the Appendix.

How much or how important the omitted parts of this famous code may be it is impossible to tell, but enough is preserved to show the crude and barbarous customs of the time and also the earnest effort for better and more humane regulations. For punishments, death, bodily injury and fines, for the collection of debts the person of the debtor was seized, and he stood on the level of a criminal. Slavery was recognized, yet at the same time among citizens special privileges were prohibited. Publicity and impartiality in all trials were enjoined. The truth was to be ascertained from witness

and without torture. There is a tinge of superstition here and there but little sanction for priestly tyranny. Taken as a whole it exhibits the germs of the system of written laws, which has since prevailed throughout Europe, commingled with the crudities and barbarities of a small warlike community, constantly struggling with its neighbors for existence. The decemvirate, having completed its labors in the enactment of the code, was not gotten rid of without strife and turmoil. Consuls and tribunes were again chosen, and it was decreed that thereafter every magistrate, even a dictator, should allow an appeal in capital cases. The tribunes were admitted to share in the discussions of the senate, and any resolution of the senate or assembly might be arrested by them. Soon after 445 B.C. the Canuleian law broke down the strict social division, which had been maintained between the orders, and declared marriages between patricians and plebeians lawful as true Roman marriages and that the children should take the rank of the father. It was further provided that in place of the consuls six military tribunes should be chosen with the powers and for the terms of consuls. As under the military system all citizens liable to military service were eligible to military commands, this in effect opened the consular office to all plebeians liable to service. This was not a permanent arrangement, but year by year there was a struggle to determine whether consuls or tribunes should be chosen, usually resulting in favor of the latter. In 435 B.C. the making up of the census, which had theretofore been the province of the consuls, was entrusted to two censors, nominated from the patricians by the centuries for a period of not more than eighteen months. To them was confided the power to fill vacancies in the senate and even to remove the names of unworthy ones from the lists of senators and *equites*. There were four *quaestors* in charge of the public money, two for the city nominated by the consuls, and two for the army by the tribes, but all taken from the patricians. In 421 B.C. the nomination of the city *quaestors* passed to the assembly of the tribes, the consul merely superintending the election, and plebeians became eligible. Granting eligibility was not equiv-

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alent to conferring the office, and the patricians still continued to fill most of the magistracies. The wealthy plebeians struggled to advance their own political privileges quite as much as to better the condition of the poor. There were not only patricians and *plebs*, but among the *plebs* there were the freeholders and the *proletarii*, and beneath all the slaves, who were without political rights and for whose welfare as a class no party ever labored. During the struggle between patricians and plebeians the division was not so much between rich and poor or between freeholder and non-freeholder, as between patrician privilege on the one hand and plebeian freeholders on the other, but the plebeian leaders gave some heed to the cries for relief coming from the small farmers and laborers. In 378 B.C. the tribunes Gaius Licinius and Lucius Sextius submitted a proposal, first to abolish the consular tribunate and to thenceforth require that at least one consul should be a plebeian; second to open to the plebeians admission to the priestly college of custodians of oracles and to increase the membership to ten; third to allow no citizen to maintain on the common pasture more than one hundred oxen and five hundred sheep, or to hold more than five hundred *jugera* (about three hundred acres) of the domain lands; fourth to oblige landlords to employ in the fields free laborers in proportion to their slaves; fifth that debtors should be allowed a deduction of the interest which had been paid from the principal of their debts and terms for the payment of the balance. After eleven years the senate yielded and these proposals were adopted. Following these reforms the judicial power was detached from the consuls and vested in a special officer, the *praetor*, and the supervision of the markets, the police duties connected therewith and the celebration of the city festival, were conferred on two newly created *aediles*, called by way of distinction from the plebeian *aediles*, *aediles curules*. These offices were soon opened to *plebs* and patricians alternately, and within a few years *plebs* were made eligible to the dictatorship and office of master of the horse and to both censorships, and the patricians by law excluded from one censorship. Through these various offices the *plebs* not only gained

admission to the senate, but those who had filled the offices of consul, *praetor* and *curule aedile* were summoned to give their opinions on matters before the senate in the order named, whether *plebs* or patricians, and the other senators merely voted on the division. Afterward the priestly colleges of *pontifices* and *augurs* were opened to the *plebs*. The senate lost its veto power on laws passed by the assembly, and at length it was provided that decrees of the *plebs* should have equal force with those of the whole people. This happened about 286 B.C. and witnessed the termination of the main contention between *plebs* and patricians. It had previously been enacted (339 B.C.) that the senate should give its sanction to all laws before submission to the people, which in a brief time practically deprived the senate of its veto.

The Roman government as thus constituted, and as it continued without substantial change till the time of the Caesars, vested the law-making power in three popular bodies, either one of which exercised its powers without action by the other, and each of which included in its membership a large proportion of the members of the other bodies. These were the *comitia* of the centuries which corresponded with the soldiery acting in their civil capacity, the *concilium plebis*, made up of the whole body of the *plebs*, voting by tribes, and the *comitia tributa* of the whole body of the people, also voting by tribes. The membership of the *comitia* of the centuries was based on a property qualification, that of the other bodies was not. This body at first could be convened and presided over only by a consul, but afterward the censors had power to convoke it for matters relating to the census and the *praetor* for state trials. The procedure in the passage of a law by the *comitia* of the centuries by which the XII tables were enacted was, first publication of the proposed law two weeks before the day appointed for the vote, during which time meetings were sometimes held for its discussion; second, on the appointed day the *auspicia* were taken by the presiding magistrate, assisted by an *augur* which, if favorable, were followed by summoning the people by blast of the trumpet to attend prayer and sacrifice offered by the president, pontiffs and augurs. A

final discussion might then follow, at the conclusion of which the citizens marched to the Campus Martius where the call was read and, if no portent from heaven intervened, the question was then put, "Is it your pleasure *Quirites* to hold this as law." The vote was taken by centuries, those of the knights and freeholders of full valuation being taken first. If these were unanimous the vote went no farther, as they constituted a majority. Prior to the Publilian law the consent of the senate was still necessary, but afterward it was not. In the *concilium plebis* it was not necessary to consult the gods by taking the *auspicia*. It could be convened and presided over by a tribune or an *aedile*, and its resolutions required no confirmation by the senate.

The *comitia tributa* was convened by a patrician magistrate, and before it could proceed the *auspicia* had to be taken and its enactments required confirmation by the senate. When so confirmed they bound the whole people, while those of the *concilium plebis* bound *plebs* only until after the Hortensian law. The struggle of the classes, through which the governmental system was evolved, was contemporaneous with the struggle with external foes through which the number of the people, the possessions and power of the state steadily advanced. From a kingly government of a small community, based on the idea of absolute paternal authority, a populous state was formed with the power of making laws definitely lodged in the mass of the people; with the idea of written law to settle private rights and direct the action of officials clearly comprehended and adhered to, and with a distribution of powers among executive, administrative and judicial officers designed to render one a check on another. Publicity in trials and the right of appeal were shields against the arbitrary exercise of power; but more than this the brief terms of officers, in whom the powers most subject to abuse were confided, made systematic tyranny impossible, though it could not prevent instances of it. That this security might not be impaired by successive elections, it was ordained 342 B.C., that the same person should not again administer the office until after an interval of ten years. This rule was not rigidly

enforced, however, but in extraordinary emergencies was disregarded.

The long struggle between classes resulted in overthrowing the exclusive privileges of the patricians and in wresting the power to make laws from the representatives of that order, but instead of weakening the influence of the senate, it greatly strengthened it. A senate made up of the heads of patrician houses only would, in a state rapidly increasing in population from the elements absorbed by the plebeians, not only have become less representative and therefore less influential, but would inevitably have lost its vigor by reason of its exclusiveness. The opening of the senatorial list, not only to plebeians who were elected to the principal offices, but also to such citizens of distinction as the censors might name, made of the senate a body which included the most vigorous and influential men to be found in the state. Distinction in public service, as well as family and wealth, gave access to a seat in it. It was the only select political body in which affairs of state were discussed and policies formulated. Substantially all important public measures, aside from those which were the subject of dispute between patricians and *plebs*, were first aired and formulated in the Senate. It was the senate that proposed general policies for the advancement of the power of Rome. It supervised the administration of affairs at home and in the colonies and subject communities. It determined all questions relating to war, peace, alliances, the founding of colonies, the allotment of lands, the erection of buildings and the system of finance. It issued annually general instructions to the magistrates, fixing the number of troops and amount of money at the disposal of each. The treasurers could make no payment to a magistrate other than a consul except on the order of the senate. Even the power of the tribunes was finally turned to strengthen the position of the senate, after they were admitted to seats in it and to take part in its deliberations. Though the senate was not strictly an elective body, and though its members continued for life, its ranks were constantly recruited from consuls, praetors, aediles and other magistrates, whose merits had



been recognized by the people, and who took their seats by virtue of that recognition. The senate under the kings was an assembly of elders, whom the kings were accustomed to consult rather for the inherent value of their counsel than on account of any obligation to follow it, and though we nowhere find any enactment formally conferring powers on the senate after the expulsion of the Tarquins, it little by little assumed and exercised, as its prerogatives, those powers which were not lodged elsewhere. The people were its superiors so far as the power to pass laws was concerned, but the field actually covered by their enactments was narrow as compared with the vast range of subjects of which the senate took cognizance. Even where a law of the people existed, the senate sometimes swept it aside for the time being, if it stood in its way. Thus the political head of Rome from the end of the monarchy till the establishment of the empire was the senate. Under its guidance the leadership of Rome was first extended over Latium, then step by step over Italy and afterward over all the countries comprising its vast empire.

The struggles of Rome with the other Latin communities began in its infancy, when it was not marked out as first in power. In time it conquered Alba, which had theretofore been the chief town of the Latins. The earliest union of other Latin communities with Rome was not as subjects nor as an integral part of a single state, but as allies on something like equal terms, and at length with the confederated Latins as one party to the compact and Rome as the other. The citizens of each community were accorded equality of right to acquire land and chattels, to trade and marry in any other. This relation, formed during the existence of the monarchy, continued under the republic. With the growth of Rome the relative importance of the smaller communities diminished and all leadership centered in Rome, which gathered to itself the urban elements, the trades and industries which naturally centered in a city. The limits of the city were extended as a necessary consequence of its increase in population, and the number of tribes increased from four covering the ancient wards of the city, to twenty-one spreading over rural districts.

By the terms of the compact between the confederacy and Rome they shared equally in lands acquired by conquest, and thus the boundaries of each were contemporaneously extended, but about 384 B.C. the limits of the confederacy, which then included thirty voting members, were closed, and a policy, thereafter steadily pursued, was inaugurated, by which new communities were prohibited from alliance and intercourse with each other and bound as closely as possible to Rome. Roman citizenship was conferred on those in new settlements or acquisitions in preference to the privileges enjoyed by the Latin communities.

The leadership of Rome, which at first carried with it no dominion over the allies, little by little was converted into rulership, so far as all matters relating to external policy were concerned. The creation of new communities allied to the Latin confederacy would have stood in the way of the extension of the dominion of Rome. From the settlements on the Roman hills proceeded other neighboring settlements, to whose members the full rights of Roman citizens were accorded. By treaties or decrees the right of full citizenship was conferred on subjugated towns and new settlements more distant from the city. Revolts of some Latin towns were punished by taking from them their separate organizations and incorporating them as integral parts of the Roman state. There were other communities on which were conferred Roman citizenship without the right of suffrage. They were entitled to all the legal rights and protection of other citizens, and alike subject to military service, but merely could not vote or hold office. Other people, attached to Rome as a result of war, were granted rights and ruled in such manner as might be determined by treaty or by the Romans. There were thus, during the extension of the power of Rome over Italy, four classes of communities: 1. Roman with full Roman citizenship; 2. Latins with municipal freedom and governments corresponding in form to that of Rome, but in all matters of foreign policy, of peace and war, under the guidance of Rome, and prohibited from all alliances within or without; 3. communities whose members were citizens *sine suffragio*, included

in the census, but neither entitled to vote or hold office; 4. non-Latin communities with varying rights depending on treaties or Roman decrees. The third of these classes disappeared about the time of Hannibal's wars, being either granted full citizenship or entirely deprived of it. In after time the Roman franchise was more and more sparingly conferred. With the extension of Roman power throughout Italy there was neither direct administration of local affairs by officers appointed at Rome, except prefects named by the praetor for Roman colonies, nor representation of the different cities and states in the central government at Rome. Neither did Rome exercise the power of direct taxation in the conquered districts, but the institutions of the various communities were moulded into accord with those of Rome, and local government was administered by local authority. Those persons and communities enjoying full citizenship might exercise it as members of the tribes and centuries at Rome, but not through any system of representation. The struggle between the different orders, through which the *plebs* gained the power to make laws, had no permanent effect tending to improve the situation of the poor and middle classes. The differentiation of rich from poor went on during the period of Rome's great successes with constantly increasing speed. The poison of slavery, fostered and perpetuated by successful wars through which the slave market was constantly supplied, lay at the foundation of the industrial and commercial system. The burdens of war fell mainly on the small farmers. The privileged classes extended their possessions and pastured their herds and flocks on the public lands wrested from newly subjugated people. The earnings of slaves bought more slaves for the rich, while competition with slave labor and the extortions of usurers, who multiplied with great rapidity, placed the small farmer or tradesman between the upper and nether millstone. From the multitude of ruined farmers and traders and their descendants, recruited by freedmen, there was developed that vast mass of poor and dependent citizens, for whose benefit the senate deemed it wise to provide cheap bread and amusements. The gains of the common people in the

system of government were theoretical, while the aristocracy seized, exercised and retained an increased measure of power. With the extension of the field of operation of the armies changes in the military system were inevitable. Whereas, in the early days an army was made up of the citizens commanded by a consul, going forth to fight some near enemy during a brief campaign and then returning to the ordinary peaceful avocations, distant campaigns required longer terms of service and rendered it impracticable to recall and disband the army within the year of service of the consul. It therefore became the practice to extend the command of the consuls engaged in distant wars beyond the year, and, in place of a citizen soldiery equipped at their individual expense, it became necessary to have paid legions. With the multiplication of distant provinces, requiring the presence of armies to protect the frontier and repress insurrections, proconsuls were appointed and continued in command for such periods as the senate determined. For the administration of the law districts were established, to each of which a prefect was sent, who was a judicial officer at the head of the civil administration of the law. Strictly local affairs were everywhere subject to municipal authority in the cities and Roman colonies, and local customs were not disturbed, except for strong reasons. Alliances were formed with native rulers, wherever the interests of Rome could be advanced thereby, and the settled foreign policy was expressed by the maxim, "divide and rule." To this end republican Rome did not hesitate to ally itself with kings and arbitrary rulers, wherever such alliances appeared useful in its struggle with an aristocracy like that of Carthage. With the extension of Roman power the possessions of the patricians and wealthy plebeians were extended, and their estates spread, not only over newly acquired districts in Italy, but into distant provinces. The money lenders also followed in the wake of the armies, wherever the authority of praetor and prefect could be depended on to enforce the payment of usury. With the administration of government in distant provinces inhabited by alien people, that high sense of public duty and strictness of integrity for which the

early Romans were distinguished disappeared, and officials returned to Rome with vast wealth extorted from them. These evils became so great, that in 149 B.C. a special court was established for the trial of cases of official extortion in the provinces, the jurisdiction of which was subsequently extended to cases of treason and bribery. The ancient system of serving the state in all public stations without pay, though still continued at home, thus had engrafted on it a most corrupt and corrupting system of public service in the provinces.

Under the constitution above described, with the theoretical power of lawmaking and election of officers in the hands of the common people, but the actual direction of affairs in the senate, the power of Rome was extended throughout Italy, the Punic wars were waged and Carthage destroyed in 146 B.C. As incident to the struggle with Carthage Sicily and Spain were reduced to Roman provinces, and on its final destruction its territory was also ruled directly from Rome. Toward the east Rome did not at first seek to establish a political dominion, but sought alliances and commercial relations. The encouragement given the Carthaginians under Hannibal by the king of Macedon led to war, first with Philip and afterward with his son Perseus, resulting in his total defeat and capture by Aemilius Paulus 168 B.C., but Macedon was not reduced to a Roman province till 146 B.C. The first appearance of the Romans in Greece was as friends and allies against Macedon, and on the first overthrow of the Macedonian power the Greeks were liberated to their great delight, but their internal dissensions soon led to the establishment of the usual provincial system.

With the rapid extension of Roman power on the three continents came a correspondingly rapid development of social disorders. The Roman republic had been developed as a municipal system for the protection and well being of a comparatively small state. Its first extensions of influence were over other cities, similarly organized, to which substantial equality was accorded; but with the rapid extension of empire Rome as a central power dictated to the known world. It was no longer an association of freemen, differing somewhat

in rank, but closely allied in interest and sentiment, but a city containing a vast mixed population, drawn from many nations, most of whom were poor, ignorant and brutal, and a numerous aristocracy of great wealth, despising all labor and laborers. Avarice and greed of power became the ruling passions of the nobility. The proconsuls and prefects, who returned after the exercise of ill-defined and unrestrained powers in the provinces, despised the rabble of the city, and were impatient of the authority of the senate. Ill-gotten gains were lavished, when occasion required, to corrupt the multitude, and mercenary legions ceased to have the feelings or the interests of the ancient citizen soldiery, but followed their favorite leaders without regard to law or justice. Moral debasement of Roman society preceded the disorders which resulted in the overthrow of the republic. The efforts of the Gracchi to curb the power of the rich and afford relief to the multitude, were not productive of permanent results, and cost them their lives. Marius, though one of the common people and six times chosen consul by them, was a soldier, and at last he swept away the ancient system of organization of the legions and substituted voluntary enlistment for compulsory levy. The revolt of the Italians resulting in the social war, which occurred 90 B.C., was the beginning of those disorders which finally resulted in the empire. The legions under Sulla and the grant of the Roman franchise to citizens of allied communities domiciled in Italy overcame the resistance in the provinces, but Sulla returned to Rome at the head of his legions, and for the first time in the history of the city public measures were dictated and carried by military power. The substitution of violence for the ancient peaceful vote evidenced the decay of patriotism, and soon after Sulla's departure for Asia at the head of his legions the new citizens, who sought to exercise the franchises bestowed on them, were attacked in the forum by an armed force, acting under orders of the consul Octavius, and great numbers of them slain. In place of the government of law there had come the sway of military power.

From the ascendancy of Sulla to that of Caesar the military

leaders ruled in fact, using constitutional forms only as a means of acquiring arbitrary powers. In the early period of the development of military rule the leaders sought independent commands in the great provinces, by which they became in fact dictators over vast territories, supported in the exercise of unlimited powers by Roman troops. Having become accustomed to the exercise of unrestrained power abroad, they did not brook constitutional restraints at home. Sulla gained the command in Asia by the aid at Rome of the legions he commanded in the Social war. After his departure Cinna and Marius returned with their armed followers to wreak vengeance on their enemies and overawe the senate. Sulla on his return from Asia crushed his adversaries and barbarously murdered great numbers. The outbreak in 73 B.C. under Spartacus and the conspiracy of Catiline were but evidences of the decay of constitutional government. The senate, though led by so brilliant an orator as Cicero, had lost its moral ascendancy, and adopted the low expedient of calling on one usurper to put down another. Pompey's power and ambition developed in the command of Spain, followed by a dictatorship over the Mediterranean Sea and its coasts for the extirpation of piracy. The alliance of Caesar, Crassus and Pompey resulted in the confirmation of Pompey's power in Asia and a five years' lease of power to Caesar in Gaul and Illyricum. In 55 B.C. Caesar's command was renewed for another five years. Pompey received Spain and Africa and Crassus, Syria. On his return in 49 and the flight of Pompey Caesar assumed the whole power. The government had been in a stage of transition for half a century, but it was not of the kind that had gone on during the prior history of the state. There was comparatively little agitation of theories of government, of rights of classes, or of official powers. Military leaders sought great commands, and having gained them perpetuated and extended their power by the use of the legions under them. It was a mere exercise of usurped authority, backed by military force accustomed to obey the leaders' commands. There was no independent and vigorous force in the state, competent to formulate and maintain anything like a

just public sentiment of controlling influence. The senate divided into factions attached to the contending military leaders. The great multitude, being without property, were incapable of steady, united effort to accomplish any reform beneficial to themselves, and were in fact too brutal and ignorant to appreciate justice or virtue. The one conspicuous and appalling fact, which accounts for all the political evils from which Rome suffered, was the general and all pervading moral debasement of the people. Among the wealthy classes gross sensuality was the rule. The marriage bond, which in the early days had been regarded as of peculiar sanctity, was treated as a mere matter of convenience, and we read of all sorts of divorces and exchanges of wives among the patricians. The strength of the social system of Rome had centered around the family *lares et penates*, and the close tie which held husband and wife, parent and child, together. Laxity of the bond which holds man and wife together and laxity of morals are inseparable. Without purity and integrity in the homes there is no basis for virtue in the state. Slavery, in itself utterly immoral, is naturally productive of allied evils. The great houses of Rome rested on the support of slaves. Labor in all its forms was regarded as fit for slaves only. To earn money by any useful employment was to incur disgrace and social ostracism. In their amusements the Romans exhibited in strong light their moral depravity. The savage games and gladiatorial contests educated the multitude to brutality. The great mass of paupers, who yet were not slaves, were raised under a system which rendered it not only disgraceful to work but of very little profit. To fight in the arena or in the legions offered the best rewards. As it had departed step by step from the path of virtue, the republic had lost its vitality. Freedom cannot possibly exist without justice. In looking for the cause of the overthrow of the Roman republic various phases of the situation are given special prominence by different ones, but the plain fact is apparent, that moral degradation was all sufficient to produce every disorder.

Caesar appears to have been not worse, but rather better.



than the average of his contemporaries. After he crossed the Rubicon he proceeded to restore order without resorting to the butchery of Pompey's followers or confiscation of their property. In this he showed his superiority to Sulla and Marius. He did not ostensibly change the constitution, but he in fact seized full sway and ruled nominally as a constitutional dictator, but without limitation of time. The style of perpetual dictator implied a suspension of all limitations on his power during life. While he sought to restore prosperity and relieve individual distress by allotments of lands to his old soldiers, by the colonization of Carthage and Corinth, by stimulating settlements and improvements in the decaying towns and on the public lands of Italy, by draining the Fucine Lake and the Pomptine Marshes and other like works, he yet dissolved the popular political clubs and guilds, curtailed the free distribution of corn, and abolished the popular element of the judiciary. He assumed the title "*imperator*" and ruled through his "*legates*," admitting no check or negative of his commands by any authority. In form the old system continued and officers exercised their functions as of old. The senate met, deliberated and resolved, the assembly passed laws and elected magistrates. There were consuls, praetors, tribunes, aediles, and quaestors as of yore, but there was one supreme will, to which all opposition must yield, that of Caesar. He transformed the senate by raising its numbers to nine hundred and including in its list his old soldiers, sons of freedmen, and even Gauls. He finally severed all authority over the provinces from the Roman *comitia* and exercised his absolute power through his appointees. At Rome, as in the provinces, the officials chosen by the people were limited to the exercise of municipal authority. He established in Italy a uniform system of municipal government, which his successors extended throughout the empire. His brief rule from 49 to 44 B.C. was long enough to give definite form to the changed system of Roman government, and to confer on him the title of founder of the empire, although a period of civil war and turmoil and the division of the empire among the triumvirs intervened before the government became settled under Augustus.

Octavius after the overthrow of Anthony at Actium proceeded to so reconstruct the government as to retain all ultimate authority in his own hands, while preserving the forms of the republic. He did not lay claim to authority derived from a source above or outside the people. On the contrary he took his extraordinary powers by grant of the people and under names and forms familiar to the republic. On the restoration of peace in 28 he resigned the dictatorial powers, which he had held through the civil war, and handed over the republic to the control of the senate and people. The senate, assembly and magistrates resumed their functions. By decree of the senate Octavius was granted the proconsular authority over all the provinces in which there was any military force, the supreme command of all the land and naval forces of the empire, with full power to recruit, pay and dismiss soldiers, equip fleets, wage war and make treaties. This authority was given at first for ten years. The power did not differ in character from that which had long before been habitually conferred on proconsuls in limited territories for shorter periods. In 23 the governors of all the provinces were subordinated to him, and he was exempted from the ancient law requiring a proconsul to lay down his power on entering Rome, and was allowed to bring into the city his prefects and praetorian guards and exercise his proconsular powers from the city. This grant of power was formally renewed for subsequent periods of five and ten years. In Rome the proconsuls *imperium* carried preëminence and the right to take his seat between the consuls, to be attended by lictors, wear the laurel wreath, *paludamentum*, general's cloak and sword of the *imperator*. The senate conferred on him the title Augustus, and he was popularly termed *princeps*. To complete the measure of his power he was also made a tribune of the *plebs* by decree of the senate and vote of the assembly. This gave him the right of absolute veto on the acts of every administrative officer, and to convoke the assembly and senate and propose to them new laws. The fundamental change which had come over the views of the Roman people with reference to all governmental matters was, that in place of looking either to

the aristocratic senate or the popular assembly as the source of power, all eyes were turned to the proconsul. The senate and assembly became mere instruments for the ratification of his will. Under Sulla, Cinna, Marius and Caesar it had been shown, that whomever the legions obeyed was master also of the civil power and could command the votes of the popular assembly as well as of the senate.

Augustus reorganized the army, enlisting soldiers for long periods of service, twelve to sixteen years, with regular pay. Of these he kept the praetorian guard, his household troops and picked veterans, numbering in all 12,000 to 15,000, at Rome. The whole army consisted of twenty-five legions, each made up of 6,100 foot and 726 horse, recruited both from citizens and subjects of the provinces. Aside from these auxiliaries from allied nations and dependencies were employed, numbering about as many more.

Under Augustus the ancient system of municipal government was preserved in form at Rome, but throughout all the provinces his absolute *imperium* was under no check or limitation. The actual administration of this absolute power was carried on in accordance with a regular system, and, theoretically at least, justice was administered in accordance with laws. The municipal system modelled after that of Rome, had in republican times prevailed in all the Roman colonies, and under the empire it was extended to the provincial cities generally, each city having officers corresponding to the consuls and senate, who regulated local affairs and decided small cases. Each senate sent two of its members to Rome to represent its interests there.

For the purpose of levying the taxes Augustus caused a great map of the empire to be made. The lands were classified and rates of taxation fixed according to the quality of the soil and nature of the products. From some provinces a share of the product was taken in kind, while from others payment in money was required. The Romans were skilled in the art of levying taxes, and not only land and capitation taxes, but various forms of excise taxes and import duties were levied, and the products of the mines as well as of the

fields were made to swell the revenue. Under Augustus the senate was allowed to retain control over the *aerarium*, or treasury of the city, but the emperor's treasury, called the *fiscus*, received the taxes from the provinces and was subject to his sole authority. In a short time the *aerarium* fell under the control of the emperors. The army and the treasury upheld and perpetuated his power. To rule so many people and so vast a territory and make his will effectual, general rules of conduct must be announced and enforced through the praetors and other officers. The vastness of the tyrant's power compelled its exercise in accordance with fixed principles rather than caprice, and this necessity promoted the development of that great system of settled principles, based on the consensus of opinion of successive generations, which furnishes the foundation of the modern jurisprudence of most European and American states.

During the republic, except when a dictator held absolute power in an emergency and for a brief period, the functions and powers of all public officials were limited by law, and different offices were designed to afford a check on each other. The fundamental change effected by the Caesars superimposed a military head, who was not accountable to the people or the senate. Augustus did not attempt to break up the ancient civil system, but rather to reconstruct and strengthen it. Instead of abolishing minor offices he increased the number. The senate was allowed to continue to deliberate and exercise its former functions in all matters which did not interfere with his supremacy or policy. The evils of this system had been manifested under the temporary grants of dictatorial powers during the civil wars, and became more apparent under succeeding rulers. Unrestrained power in the hands of bad men is always abused. Not only does the tyrant gratify his own personal malice and ruin or destroy his particular enemies, but those whom he uses as his instruments for such purposes are also, as a rule, allowed to treat their enemies in a similar manner. By far the greater number of victims under the worst of the emperors owed their misfortunes to the malice of favorites and subordinates, who used the authority of the emperor to further individual ends.

The idea of government by law was never wholly abandoned under even the worst emperors. While he was subject to no supervision or control, he still in theory was subject to the laws. This adherence to laws rendered order, tranquillity and prosperity possible under the best of the emperors, and greatly mitigated the evils under the worst of them. The habit of recurrence to a recognized standard of right or of conduct tended to steadily diminish the number of personal feuds, and to encourage commerce and agriculture. The element of arbitrary power was looked upon as a great blessing when wielded by virtuous rulers, but the poison of the system became manifest under every weak or vicious one. Against a tyrant there was no protection, and the Roman people no longer strove to improve their governmental system, or to study great social questions.

In the administration of the law the judges were expected to decide causes in accordance with settled rules. Wherever a legislative enactment covered the case they were of course bound by it, but, in the absence of such a positive law, a system of rules was evolved by those who made a special study of the law, and who were looked to as authority on doubtful points. The judges who actually administered the law were not regarded as authoritative expositors of it. In cases of doubt they applied to the learned *juris consults*, licensed by the emperor to give written expositions of the law, for an opinion. This was given in writing and was generally regarded as binding, except that where two *juris consults* gave opposing opinions the judge was free to decide according to his own views. The emperor exercised judicial functions in cases brought before him either originally or by appeal or removal from an inferior court. Imperial decrees and rescripts in cases decided by him came to have the effect of laws. The emperor in theory merely declared the preëxisting law, but when the question was new the declaration had the effect of the enactment of a law. These were formulated under the advice and with the assistance of the most learned lawyers, who proceeded step by step to build up a great system of jurisprudence. Though the governmental system became rigid, unprogressive

and therefore moribund, with the final establishment of the empire the development of the system of laws went on in the most rational manner. To the Romans the credit is due of systematically developing rules of conduct and governing property rights from an intelligent consideration of the needs of society. They did not attempt at one stroke to cover the whole field by a code of laws which should not admit of change or modification, but proceeded to consider the questions as they arose from time to time, and formulated their principles from what accorded with their conceptions of right. Under the republic it had been deemed unjust or impracticable to measure the rights of strangers trading with citizens or with each other by the Roman *jus civile*, and so what was styled *jus gentium* or private international law was evolved by the praetors. About 242 B.C. a second praetor was appointed, called *praetor peregrinus*, whose principal duty was to hear causes to which foreigners were parties, and in the exercise of his jurisdiction he applied the *jus gentium* in those cases where Roman civil law was not within the contemplation of the parties and its application would be productive of manifest hardship. The Roman system under the republic exhibited a marked tendency to adapt itself to the public needs and to change with changing conditions, and herein lies the secret of its remarkable development. Under the republic the praetors were accustomed, on taking office, to publish on their *album*s (white boards in the forum), edicts making known the relief they would afford in certain classes of cases. These edicts might be continued by the successor or not, but many of them were repeatedly proclaimed and came to have practically the force of settled law. With the development of commerce the customs of merchants, based on the necessities of the conditions under which their business was transacted, were recognized by the praetors, and these customs in course of time ripened into laws. It was this facility for dealing with new conditions and adapting means to ends that rendered continued Roman supremacy possible. The rulers at Rome had to deal with people varying in civilization and culture from the rude tribes on all the frontiers of the three continents

to the highly polished Greeks. For the first time in the world's history there were united under a single authority the dwellers in the earliest seats of civilization in Egypt and western Asia, the Phoenician colonies of Africa, Sicily and Spain, Greece and all the Greek islands and colonies, the rude tribes of Spain, Gaul, Germany, Britain and Thrace, as well as the varied population of Italy. Rome from its earliest conquests had been accustomed to accord local self-government to subjugated communities, and throughout the development of all its vast empire and after the fall of the republic it continued to leave the regulation of purely local affairs to the people interested, but the central authority had to deal with the relations of all these varied peoples with Rome and the Romans, and with such other portions of the empire as they were permitted to have dealings with. The *jus civile* was the law adapted to the conditions, customs and prejudices of Romans, but not to those of strange people.

In the development of the *jus gentium* the Romans sought rules which could be safely applied under all conditions and between all people. It would be inaccurate to say that they strove to do ideal justice in each case, or that they searched for rules founded solely on moral principles, but a search after general rules which can safely be applied under all circumstances necessarily leads in the direction of truth, justice and morality. The *jus gentium* of the Roman jurists, though developed in a manner somewhat similar to the common law of England, differed from it in this, that the *jus gentium* was based on the needs of the newly acquired foreign subjects, while the common law is based on domestic customs and needs. Both however have for their foundation the presumed existence of principles of recognized force, though not promulgated by legislative authority. While the intellectual activity of the Greeks exhibited more brilliant results along most lines than that of the Romans, in the science of law the Romans are clearly entitled to the first rank. While the system of government established by Caesar early manifested its imperfections and its utter lack of any mainspring urging it in the direction of improvement, the *juris consults*, en-

couraged and efficiently backed in their efforts by the best of the emperors, by degrees evolved a system of laws commending itself to such sense of justice as has generally obtained among the great mass of mankind. Roman jurists early found that a complex civilization presents complex problems, and that the law must deal intelligently with these and with all of them, however numerous. They proceeded laboriously to formulate rules of general application, by which every controversy might be determined. In their search after these principles they were inevitably led to a consideration of *jus naturale*, which embodied the idea of natural rights existing without legislative sanction. Augustus adhered to the ancient system of legislation in the principal reforms he proposed, and caused his law to be adopted by vote of the *comitia* of the tribes. He made a most commendable, though not entirely successful, effort to reform public morals by encouraging marriage and the rearing of children. One of the provisions of his law excluded unmarried persons within certain ages from taking property by will, and limited childless persons to one-half the amount given. Another class of legislation, deemed of great importance, regulated the manumission of slaves and determined the status of freedmen according to circumstances prescribed in the law, as citizens, as capable of becoming such or, owing to bad character, forbidden to reside within one hundred miles of Rome or ever to become a citizen. A third class of enactments regulated procedure in private causes.

From the time of Tiberius the *comitia* was no longer consulted, and under succeeding emperors imperial rescripts and decrees gradually superseded legislation by assembly and senate. Rome witnessed the growth of the law of contracts from primitive conditions in the early days of barter of chattels and tribal and patriarchal tenure of lands through successive stages to that freedom of contract so essential to commercial activity. In the early stages the formalities required in the transfer of property in order to furnish a basis for the action of the courts were incompatible with anything like commercial activity, but step by step the law of contracts developed, till



the intent of the parties was given effect by the courts with little needless formality. The law of inheritance was through all ages a leading subject of jurisprudence, and here, as in the law of contracts, there was a steady tendency to greater freedom in the disposition of property according to the will of the owner. Contemporaneous with the vast increase of the army new rights were accorded to soldiers in the disposition of their estates by testament. As to property acquired by military services the soldier son was allowed full power of testamentary disposition, freed from the *patria potestas* of the head of the family. With this change came also a recognition of the right of owners generally to dispose of property by will and the growth of trusts created by will. The great heads of legislation and judicial cognizance were domestic relations *i.e.*, family and slaves, inheritances, contracts, land tenure.

For the protection of invaded rights there was an effort under the empire to improve remedies and adapt means to ends without any radical change of the system. The ordinary suit was instituted by application to the praetor. Under the old system the parties themselves formulated the issues to be tried in accordance with statutory or traditional forms, and the issue so made was sent to the *judex* for trial. This was changed so that the issue was framed by the praetor. The plaintiff usually stated the case and indicated on the *album* the remedy he thought suitable, and the defendant entered his plea indicating matter of defense in law, and reserving his right to traverse the facts. Thereupon the praetor considered the legal exceptions to the case stated by the plaintiff, and made up a written and signed appointment to a judge, instructing him what to try and authorizing him to condemn or acquit the defendant. The form in which the issues were framed in an ordinary action to recover a debt was exceedingly simple like this "Caius be judge. Should it appear that M. A. ought to pay ten thousand *sesterces* to J. C. in that sum condemn M. A. to J. C.; should it not so appear acquit him"! Modifications of this form allowed the recovery of the value of chattels or an equitable accounting of profits or the like.

One form for the trial of a suit for land was, that the plaintiff required the defendant to give him a stipulation to pay a nominal sum in case the land should be found to belong to the plaintiff and to give surety for its transfer in that event. The question sent to the judge to be tried was whether the sum should be paid. If the plaintiff recovered and the defendant did not deliver the property, recourse was had on the sureties. Besides the set forms adapted to certain classes of actions the praetors formulated a great number, suited to special cases, generally styled *actiones in factum*. They also by interdict gave relief similar to that granted by injunction under our practice. The development of remedies was very similar to that in England. In the early times a few set forms of action afforded all the relief allowed; later these by fiction were allowed to cover cases not within the letter, and then new forms of procedure were devised to meet new conditions. Causes presenting novel questions and of especial difficulty were retained for trial and disposition by the praetor or taken cognizance of by a consul. The *judices* to whom the praetors referred causes were not officials, but citizens selected to hear and determine the particular cases. In the time of Diocletian the system of referring causes to *judices* fell into disfavor and was soon discontinued altogether; governors, prefects and praeters being required to hear the cause to the end, and the old procedure by which the plaintiff himself brought the defendant into court was abandoned.

The government of Rome, though in its essence a despotism, did not discard all the forms of a republic till the time of Diocletian. Though for centuries the obsequious senate had ratified the edicts of the emperors and given a formal sanction to his will, Diocletian ignored it altogether. He associated with himself the harsh and vigorous soldier Maximian, as joint ruler with the style Augustus, and later two other associates, as inferiors under the style Caesares; all subordinate to Diocletian as senior Augustus. He threw off all pretense of constitutional government and openly assumed autocratic powers, and to the title "*imperator*" added that of "*dominus*," and required those approaching him to make those

servile prostrations which were customary in the courts of the east. He infused vigor into the administration of the local government, but it was everywhere despotic vigor, emanating from the central authority. The government ceased to be administered from Rome as the seat of power; Nicomedia in the east and Milan in the west became the favorite residences respectively of Diocletian and Maximian. In his reign the government reached its climax of absolute power and rigidity, though the scheme of a quadruple division of power did not endure. While administrative changes occurred from time to time thereafter, the government remained despotic, unprogressive and moribund. The Roman republic was dead. The Roman empire ceased to be ruled either from Rome as a capital or by Romans, for Diocletian was the son of slave parents, and his mother was a Dalmatian. At the head of the civil administration were four prefects, under whom were the *vicarii* over the twelve dioceses, and governors of the 116 provinces with their hosts of minor officials, all under strict subordination and accountability to the central authority.

The reign of Constantine, beginning in 323, witnessed the establishment of the capital of the eastern empire at Constantinople and the adoption of the Christian religion as the religion of the empire, but the theory of government remained unchanged. For the beneficial effects of Christianity we have to look elsewhere than to the governmental machinery. Though writings embodying the principles of the law multiplied, not only in the form of enactments by the *comitia* and senate and later in rescripts and edicts of the praetors and emperors, but also in extended commentaries by *juris consults*, it was not till the reign of Diocletian that the first efforts at codification were made. The Gregorian Code was a collection of imperial rescripts made near the end of the third century, to which Hermogenianus added a supplement about 365. These codes received the sanction of Theodosius and Valentinian. Under Theodosius a compilation was made and published A.D. 438 in sixteen books, covering the whole field of the law. Other less noted compilations among which may be mentioned one by order of Theodoric king of the

Ostrogoths, called the *Edictum Theodoric*, and another by order of Alaric II king of the Visigoths, styled *Lex Romana Visigothorum*.

The work however which stands as the product of all legal development under the empire is that accomplished by Tribonian and his associates. As we have seen, during the years of development the law gained written expression from time to time in edicts, rescripts and opinions of the *juris consults*. These in the time of Justinian had become so numerous as to fill nearly two thousand volumes. Justinian was not merely a compiler, but himself made various reforms in the body of the law. The first compilation made under his order was called the code, including the statute law and rescripts of the Gregorian and Hermogenian codes. This was followed by his fifty decisions, the Institutes, the Digest of writings of the jurists, a revised code and a series of Novels. Taken together they purport to cover the whole field of the law, civil, criminal, public, private, secular and ecclesiastical. The most that can be attempted here in reviewing this great work is a very general outline of its scope and leading provisions. This is rendered most difficult by the want of systematic and orderly arrangement, which alone saves modern publications from chaotic worthlessness.

Of the compilations of Justinian the Institutes were designed as a textbook for the schools, but the Digest and second or revised code were declared of equal authority. A condensed summary of the Institutes will be found in the Appendix. It is noticeable that the compiler and final authoritative promulgator of this vast product of Roman jurists, should have been a barbarian, born in Illyricum, ruling in Constantinople after the final extinction of the western empire and the overthrow of Rome as a center of political power. The vast accumulation of legal lore filling so many volumes was reduced to reasonable limits, freed from many uncertainties, improved in many particulars and promulgated as of controlling authority in all courts in the empire. It is even more remarkable that the perfection of this great body of law should have been effected after the disintegration of the empire was

well advanced, and at a time when letters were neglected and the authority of courts was being broken by the inroads of the barbarians and the disruption of the Roman system throughout the empire. Having reached its culmination the Roman law ceased to develop or have uniform operation, but gave way to the customs and laws of the barbarians wherever they supplanted Roman civilization. It was still resorted to in those parts of the empire which escaped the inroads of the barbarians, and as learning revived regained its force with modifications resulting from changed customs and conditions. Justinian, like many another lawgiver, aimed at completeness and finality in his work, and forbade the use of any other books or authorities, or any comments or interpretations of his works. He like others was oblivious to the truth that an absolutely fixed and rigid system of government or of laws is impossible. Anything like a clear comprehension of a system of laws necessitates an understanding of the material and social conditions to which it is applied. If we had no extrinsic evidence, the laws themselves exhibit the importance of the Roman theory of the family and of the institution of slavery. From the earliest days of Rome slavery had been a recognized institution, and it held its place until the empire broke into fragments. In the early days the number of slaves was relatively inconsiderable, but as new territories were added and the rich citizens enlarged their estates, they increased the numbers of their slaves, till in the time of the Caesars the nobles owned them by hundreds and even by thousands. With this great increase in slave holding came a corresponding decrease of the prosperity of the poorer class of citizens, who throughout the agricultural districts gradually ceased to be independent landowners and became tenants of the wealthy proprietors. In course of time this tenancy became on harder and harder terms, till the *coloni*, as they were termed, became virtually serfs attached to the soil, bound to cultivate the land on terms affording but a bare subsistence. Agricultural slaves were to a great extent assigned to the cultivation of particular tracts of land, which they were permitted to occupy with their families, and thus the actual conditions under which

the *coloni* and the slaves lived were often very similar. In the days of greater activity slaves were employed by their masters, not only on all kinds of works, but in all trades and callings, and opportunities for the acquisition of property and of freedom were afforded to some. The proud Roman patrician despised all useful labor and entrusted every employment to his slaves. Under the republic their numbers were sufficient to make servile revolts serious, and the insurrection under the leadership of Spartacus was only subdued after a desperate and bloody war. The emperors aimed at the establishment of social order and the protection of property rights. The moral claims of the slave to liberty and the pursuit of happiness were wholly obscured by the master's right to property. The great province of law and government was first to firmly establish the power of the emperor and those acting under him, and next to maintain the rights of property, that is the dominion of the master over his slaves and his lands. The ancient Roman idea of a single head of the family with full sway over all his children under the power and their families, accorded well with the spirit of a slave holding community. We have seen how largely slavery entered into the legal system of Justinian, and how fully it was recognized, though declared to be contrary to natural justice. With the reign of Justinian the empire in the west witnessed its last vigorous assertion of supremacy in Italy, though it nominally maintained a semblance of authority in central Italy till 755. The perfected despotism had become crystalized under Diocletian, leaving no chance for development or betterment from the wisdom of the multitude. The lawyers and lawmakers continued to change, amend and improve the laws till the time of Justinian, when they were compiled by his direction, and though greatly improved and rendered far easier of access than when scattered through so many volumes, they rapidly passed out of view and became unsuited to the changed conditions. The social decay resulting from an organization of society under which the great multitude were slaves, without education, opportunity for observation except of their immediate surroundings, or hope of better conditions, with an

indolent debauched nobility supported as drones, invited the frequent inroads of the more free and vigorous races of the north. The various Germanic tribes, the Goths, Vandals, Lombards, Huns and Franks in wave after wave swept down on Gaul, Spain, Africa and Italy, until the Roman system gave way, and a new composite of northern manners and Roman customs ushered in the so-called dark ages, when learning was for the priest alone, and war was the business of every freeman. With the growth of the feudal system, with its lord paramount at the top and its serf bound to the soil at the bottom, the slavery of the Romans disappeared. It may be interesting for scholars to trace the stages by which the slaves and *coloni* of the Romans and the humbler followers of the Frankish leaders were transformed into the lowest round of the feudal ladder, but the transformation was not the result of conscious law-making. The decay always incident to despotism, idleness and corruption in the palace, a multitude of officials, ever bent on extorting more and more from every producer of wealth, weakness and inefficiency in those who lived in idleness on the fruits of the labors of others, at last culminated in conditions but little removed from anarchy. The various leaders attracted followers according to their abilities, to whom they parcelled out the lands on a strictly military tenure, the lord pledged to protect the vassal in his possession and the vassal bound to fight in all the lord's wars. The slave, the *colonus* and the indigent became the serf, ceorl and villein of the feudal chief. The eastern empire lingered on as an uninteresting despotism till the fall of Constantinople in 1453. At Rome the spiritual power of the popes gained an ascendancy over Europe, which made the eternal city once more the seat of power.

From the fragments of the western empire, through numberless vicissitudes have developed the modern European states. Until within modern times these, with exceptions hereafter noticed, were mostly governed by rulers claiming power as absolute as that exercised by the later Roman emperors. The rules of feudal tenure took the place of the land laws of the Romans and gave to title to lands a prominence in

the system of laws which it never had under the Romans. With the latter the slave was a more prominent object than the land he tilled. Under the feudal system land tenure was the basis of the relations of all orders of society, and the land and its produce, after the decay of the industrial arts, became almost the sole wealth of the people. The rank of the lord paramount depended on the extent of his holdings and the number of retainers who did him homage.

Though so large a part of the Roman law became obsolete by this change, it still contained the only compilation of rules for the determination of questions arising from the multifarious dealings of men, from their contracts, their acts and neglects, and with the revival of learning and of commerce, the great work of Justinian, having slept for hundreds of years, became the fountain of legal lore to which the students of the law throughout all Europe turned for light and authority on doubtful points. The reasoning of the ancient writers, preserved in the Digest, still throws as clear light on many questions as can be found anywhere, and carries with it the authority of *jus naturale*.

Five centuries of struggle between classes for ascendancy, and of a public sentiment that demanded from the citizen a sacrifice of private interest and of life when needed for the republic, witnessed the rise of the Roman state, the extension of a system of self-government and of laws over western Europe and all the countries bordering on the Mediterranean Sea. It witnessed a high development of agriculture, the growth of manufacturing, mining, arts and commerce, wherever Rome's power was recognized, and marked advancement in learning. Though Rome waged almost incessant war in some quarters, the area of peace extended with her conquests, and an ever increasing proportion of the people were enabled to pursue peaceful avocations in security. Under these conditions population multiplied and wealth and comfort, though most unequally distributed, were general throughout the state. During these five centuries public office was sought and public duties were performed for honor, not for profit. The rank and distinction resulting from high offices of state were



deemed so great a reward that the brief terms of yearly power were eagerly sought by the most capable citizens.

The vast military organization and the struggle for its leadership developed the empire. Five centuries of rulership from a single head through an ever increasing multitude of highly paid officials, of gradual elimination of all self-government and of substitution therefor of rigid laws, enforced often with extreme severity and cruelty, witnessed the decay of public virtue, the decline of population, wealth, learning and all those conditions which tend to make life enjoyable. Owners of vast estates with their multitudes of slaves afforded no material from which to build an efficient, spirited army. The free and vigorous Germanic tribes swept over Gaul, Spain, Africa and finally Italy and Rome itself. The magnificent structure of a firm and settled government with its code of well developed laws governing so vast a territory and such a multitude of people, capable as one might think of conferring immeasurable good on innumerable people, in fact resulted in desolation and anarchy. Why? Because it was immoral and unprogressive. It bred vice and cruelty in the palace and all who held authority under it, and stifled the political virtues of the multitude. It divided the people into masters and slaves. Though the eastern empire lingered on till Mahomet II took Constantinople, and killed the last of his line, the emperor Constantine Poleologus, it presents no other features of government or laws worthy of especial study. It was but another oriental despotism, with its record of ever recurring cruelty, treachery, wars, murders, and occasional exhibitions of virtue in the palace, soon followed by the same old story of debauchery, vice and imbecility; overthrown at last by a new dynasty to again follow the same dreary round.

Though the Western Empire passed away long before the Eastern, the influence of Rome as a law-making and law-enforcing power was perpetuated through the Church, and still continues. The Canon law was more than a collection of moral precepts advanced as binding on the conscience. It covered a field claimed by the Church as under its government, and came to be accepted in more or less of its rules by the

secular power of all the nations professing the Christian religion. It was given form by synods and councils of the clergy and the decretals of the Pope. These were put forward as carrying a religious sanction, binding on all mankind, and were enforced by the tribunals of the church in accordance with its practice. From the Canon law are taken many of the rules now observed not only on the continent of Europe, but in Great Britain, its colonies and the United States, in matters relating to the domestic relations. The Church took charge of the baptism of infants, the marriage of adults and the burial of the dead. In the performance of these rites there was no distinction of rank. Prince and pauper alike were children of the Church. With the acceptance of the Christian religion the heathen prince bowed to the spiritual power of the Pope, and received baptism at the hands of a priest. It was impossible to be a Catholic without acknowledging some part of the Canon Law, and thus the most powerful monarchs found it impossible to wholly ignore the temporal sway of the Pope within their dominions. The principal heads of the jurisdiction of the ecclesiastical courts were:

1. Marriage and divorce.
2. Legitimacy of children.
3. Wills and the administration of estates of deceased persons.
4. Causes relating to church property and revenues.
5. Those affecting the persons of the clergy.

The first two were earliest asserted, most generally admitted and continued to be longest exercised. The fourth and fifth were most difficult to establish and maintain. Many of the principles followed by the ecclesiastical tribunals as substantive law are still retained in countries where the jurisdiction of church tribunals is confined to the discipline of its members in purely religious matters.

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## CHAPTER XV

### MEDIAEVAL EUROPE

The empire of the Romans in Europe was limited on the north and east by the Danube and the Rhine after the abandonment of Dacia in 256, and included Britain and the lowlands of Scotland in the north and the Chersonese on the Black Sea. Without these boundaries lay the vast *terra incognita* of Germany, Sarmatia and the northern peninsula. Of the early history of this unknown country we know only what is told by Greek and Roman historians in connection with wars and movements of people, where Greeks and Romans came in contact with Germans, Getae, Scyths and other people of the north and east.

After their conquest Spain and Gaul became thoroughly Romanized, and the country south of the Danube with its predominant Greek elements submitted to Roman rulership and laws. Though the empire was many times shaken by wars over the succession to the imperial throne, and though in the east Persia offered battle from time to time, the period from the reign of Augustus to the overthrow of the western empire in the fifth century was one of comparative peace and security, yet not of progress. Agriculture and the useful arts, instead of advancing, fell into decay. Learning waned and the ability to read and write, which under the republic had become common, was rare. The great works of Justinian in the next century, reducing the laws to form and system, never became generally known to the people of his exhausted and crumbling empire.

Imperial rule produced neither moral nor material development. Roman sentiment never condemned, but rather delighted in bloody spectacles and exhibitions of cruelty and barbarity. Slavery lay at the foundation of property rights. The ignorant multitude applauded the lavish expenditures and

barbaric display of the rich. Neither the government nor the property system rested on any moral basis. With the destruction of the middle order the integrity of the domestic system was broken, and that only sure repository of virtue and purity, the family, was subjected to the debasing influence of frequent divorces and remarriages at the dictation of interest or caprice.

With the republic also passed away that devotion to the public welfare, which had been the conspicuous virtue of Romans throughout the long and desperate struggles that gave Rome mastery of the known world. This was the Roman approximation to a conception of the universal moral principle of mutual help. In its place came oriental sordidness. Deprived of all participation in affairs of state, unless as the mere instruments of the imperial will, the ambition of the citizen was to gain wealth and through wealth enjoyment. The sure fruits of successful effort in this direction are cruelty and sensuality, which in turn bring disease and destruction. Out of the darkness came the Germanic tribes, whose history no records preserve. With manners and customs bearing more resemblance to those of the Romans of the early days than prevailed in the empire, they attacked the enervated Romans. In the early years of imperial rule the vast resources of the empire were such as to render victory over the comparatively insignificant tribes sure, if not easy. In the reign of Marcus Aurelius an irruption of the Marcomanni and allied tribes swept across the upper Danube over Pannonia, Noricum and Rhaetia to the Alps. They were driven back after fourteen years of war. In 236 the theretofore unknown tribes of the Alemanni crossed the Rhine, and the Goths appeared on the Danube. During the civil wars from the reign of Philip to Claudius, 244 to 249, the barbarians improved their opportunities, and the Alemanni and Franks poured into Gaul and Spain and even Africa. In 247 the Goths crossed the Danube and overran Moesia, Thrace and Macedonia and in 251 defeated and killed the emperor Decius. In the reign of Valerian 253-260 their fleets appeared on the Black Sea and ravaged the maritime towns of

Asia Minor. In the reign of Gallienus, 260 to 268, a fleet of five hundred sails appeared on the coast of Greece and sacked Athens, Corinth, Argos and Sparta. In 269 under the emperor Claudius the Romans defeated and drove them back across the Danube. Five years later a raid of Franks and Alemanni was repulsed on the Rhine. As a result of these conflicts the Romans were forced to recede and abandon Dacia and all possessions beyond the Rhine and Danube to the advancing barbarians. Under the vigorous and despotic reign of Diocletian the integrity of the empire was preserved and the authority of the government vigorously maintained, but there was no improvement in the moral tone of either people or government. Selfishness and want of social virtue called for a better corrective than a more vigorous assertion of authority and an increased burden of taxation. The removal of the capital to the Bosphorus was soon followed by the division into the eastern and western empires, and by the decay of imperial authority throughout the west.

In 376 the Huns emerged from the unknown hives of Asia and pressed against the Goths, who sought the protection of the emperor. They were allowed to cross the Danube and settle in Moesia, but soon rose in arms against their protectors and in 378 defeated and killed Valens, overran Illyricum, and advanced to the gates of Constantinople. Theodosius made peace with them and took many into the army. While the boundaries of the empire were nominally maintained throughout the fourth century, there was a growing pressure from the northern tribes. As a result of their contact with the Romans, Goths, Franks and other nations acquired some knowledge of military science, and learned to supplement the hardy valor of their warriors with some measure of discipline and mutual support. On the other hand, civil wars, the dependence on mercenary troops, the utter disappearance of everything like unselfish devotion to the public welfare, the grinding burden of taxation levied to pay mercenaries, many of whom were barbarians, and to support the vile profligacy of the palace and the ever growing multitude of officeholders, the slavery or extreme poverty of all who labored, and the

want of courage and manhood in the favored few, who dissipated in wasteful luxury the best of all the toilers produced, left the empire enervated and spiritless. Barbarians who had fought in the armies of the emperors became qualified to lead armies, and Alaric, who had been favored by Theodosius, led the Goths from their settlements south of the Danube, where many of them had embraced the Christian religion, into Illyricum and Greece and thence into Italy, closing his triumphant career with the sacking of Rome in 410.

Contemporaneous with this movement of the Goths there was an irruption of the Vandals, Suevi and Alani into Gaul and thence into Spain, where they established permanent settlements and partitioned the country among the tribes. In 419 Ataulf as king of the Visigoths founded a monarchy in southwestern Gaul. In 429 the Vandal king, Genseric, crossed into Africa with his army and their families and established his authority there. He was recognized by the Emperor soon after and took Carthage in 439. The movements of these Germanic tribes were not solely in the form of attacks, starting from their homes beyond the great rivers, but were in part migrations into new homes assigned them by the emperors. Goths, Vandals and Franks learned Roman methods before achieving great victories. In 451 the Huns under Attila attacked the empire and invaded Gaul. Attila came as the ruler of a great dominion, including not only Huns but many German tribes. He drove the Goths before him, who in turn united with the Romans and aided in his defeat. In 455 the Vandals under Genseric invaded Italy from the south and sacked Rome. In 476 Odoacer, the Goth, was proclaimed king by the barbarian mercenaries in Italy, and although he nominally recognized the authority of the emperor of the east and received the style patrician, all real power was in his hands. Though a Goth, he recognized the Roman laws, and used the Roman system of administering them. He took one-third of the lands of the great proprietors and distributed them among his followers. Odoacer was overthrown, not by Romans, but by the Ostrogoths, who under Theodoric invaded Italy with their wives, children and chattels from the

Balkans, where they had tarried when their brethren the Visigoths moved westward.

Theodoric ruled Romans by Roman law and Goths in accordance with their own customs. He provided for his people from the lands confiscated by Odoacer, a great part of the holders of which had been killed in battle. The Goths were judged by their counts, and where a controversy arose between Goth and Roman, the case was heard by a mixed court. He had his body guard and its chief officers of Goths and also a full establishment of Roman officials. Theodoric extended his rule, not only over Italy, but also over the Germanic people in Rhaetia and Noricum, and over southern Gaul and Spain. The traditions of the Lombards related that they had dwelt on the Scandinavian peninsula, whence they had crossed the Baltic into Germany and pressed their way down to the Danube. In 552 Justinian's general Narses employed 5,000 of them as auxiliaries in his war in Italy, where they learned of its fertility and desolation. In 568, under the leadership of Alboin, whom they had elected king, the whole nation, men, women, children, slaves and chattels, crossed the Alps and descended into Venetia, whence they spread over northern Italy. They came with primitive German customs, divided into tribes or clans led by elective chiefs called *Aldanes*. The tribes united in choosing a king when war rendered concert of action necessary, but his authority seems to have practically terminated when war was over. After Alboin had been murdered and Clepho, his successor, killed by a slave, they chose to do without a king for ten years, and the tribes ranged over Italy and across the Alps into Provence. Settlements were made by them in various parts of the peninsula alongside the Romans and remnants of the Goths. The Lombards were fierce and warlike, but never established a firm dominion over all Italy, though they became the dominant portion of its population. They retained their ancient customs and laws more persistently than the Goths, and in 643 their king, Rothari, published a compilation of their laws, which was promulgated, not as emanating from his authority alone, but with the counsel of his *witan* and the assent of the armed



*folk-moot* of the Lombard nation. It prescribes the *weregeld* to be paid for homicide, laws against armed violence, rules of inheritance and of the obligation of the follower to his lord, and for judicial combats. The people were divided into free-men and *aldu*, serfs, who tilled the soil. It was the Lombard invasion that caused the imperial governors to remove from Rome to the inaccessible Ravenna, where the shadow of imperial power lingered for a time, circumscribed within a very narrow compass.

During the reign of Odoacer in Italy the Salian Franks under their king, Clovis, invaded Gaul from their home on the east of the Rhine. By force of arms he extended his dominions on both sides the Rhine, and overthrew the empire of the Visigoths in Gaul. He ruled as a fierce and bloody soldier. The Merovingian dynasty founded by him lasted nominally from 481 to 751. With the vast increase in the territory ruled by Clovis and his successors came also a corresponding increase of arbitrary power. The ancient Germanic custom of deciding public questions in general assemblies of the people, which was entirely practicable for a small compact tribe, speaking a common language, became impossible when dominion was extended over so large a territory, including many tribes differing in language and customs from each other. The power to rule was acquired through military supremacy, and naturally the king became a military despot, who soon ceased to consult even the warriors of his native race. The king was distinguished from his followers by wearing long hair, a crown and using a kingly spear. After the conquest of Gaul Clovis assumed the patrician robe of Rome. At his palace he was surrounded by his companions in arms, bound to his person by a special oath of fidelity. In the royal household the chief was styled Mayor of the Palace, and was the highest official under the king. After him came the Marshal, having charge of the royal stables, the *Comes Palatii* his legal adviser and assessor, the Treasurer and Royal Secretary. These exercised their functions under the king's commands at the palace or on any mission on which he might send them. The kingdom was divided into counties, over

each of which was placed a count. In the Germanic part of the kingdom the counties corresponded with the tribes and in the Roman with a city with its dependent district. The count was military leader, judge and taxing officer. Several counties were under a duke in some parts of the realm, who became the commander of the combined military forces with general control over the counts. The counts and dukes were assisted by deputies, who filled their places when absent. Beneath these there was a headman over each of the hundreds into which a county was divided, who was a judge in petty causes in time of peace and head man of his hundred in time of war. At stated periods the count went into each hundred and disposed of causes in a public assembly, being assisted by chief men of the hundred, whom he called to his aid. In this court the count exercised full power and disposed of life and property. Great crimes were punished with death, but the family of a murdered man might condone the offense on the payment of a sum of money. Trials were conducted in various forms, compurgations and combats were allowed among the Ripuarians, but not among the Salic Franks, and ordeals were resorted to as well as the testimony of witnesses. Besides the officers named the king had his bailiffs in charge of the crown lands, from which he derived an important part of his revenue. Aside from these the revenues of the king were derived from custom dues on the frontiers, fines and compositions in the courts and taxes charged against each county, collected and remitted by the count.

By the time of Clovis German people were scattered throughout those parts of Europe that had been dominated by the Romans, and German customs variously modified by new environments, ripened into laws. Even where the Roman element was dominant changed conditions, the decay of learning and stagnation of all commercial and industrial pursuits led to innovations in the law. The diversity of customs and the tenacity with which the invaders held to their own led to the application to each person of the law of the tribe to which he belonged rather than the laws of the territory which he inhabited. The customs of illiterate barbarians did not

cover anything like the field of the Roman law but were adapted to their needs and were rules of action and of right which they had learned in their tribes. Great diversity of conditions, lack of a government with power extending over any large territory for any considerable period, poverty, lack of intercourse between distant people and general ignorance and illiteracy were conditions which naturally led to very great diversity of customs and local laws. From Scandinavia to Spain and Italy the people of each town and community of any considerable size had its own peculiar usages.<sup>1</sup> To collate and trace the changes in even those rules that became the local laws for considerable districts would be a stupendous task. Traces of many of these local customs may still be found in existing laws, but increasing learning and intercourse constantly tend to uniformity of laws.

The spirit of the German people had always been opposed to polygamy. Clovis became a Christian and was baptized, but domestic virtue was something almost unknown in the palaces of the Merovingians. The Franks maintained their own system of laws, which Montesquieu says were compiled after quitting their own country by the sages of the nation,<sup>2</sup> and the customs of the German tribes which he subdued were also compiled by Clovis' order. The Franks had reached that stage where title to the land on which the possessor dwelt was recognized, and the Salic law of descent was: "1. If a man dies without issue his father or mother shall succeed him. 2. If he has neither father nor mother his brother or sister shall succeed him. 3. If he has neither brother or sister the sister of his mother shall succeed him. 4. If his mother have no sister the sister of his father shall succeed him. 5. If his father has no sister the nearest relation by the male side shall succeed. 6. Not any part of the Salic land shall pass to the females, but it shall belong to the males, that is the male children shall succeed their father."<sup>3</sup> The kingdom was treated as the property of the king, and its integrity was not

<sup>1</sup> Continental Legal History Series, Vol. 1.

<sup>2</sup> Spirit of Laws, p. 196.

<sup>3</sup> *Id.*, p. 326.

protected by a rule of succession which passed the undivided power from hand to hand. On the death of Clovis his four sons fought for supremacy, and similar civil wars, the sole excuse for which was the ambition of rulers, were fought in succeeding generations. The Merovings were bloody, treacherous and licentious, and like most other dynasties of absolute rulers, later generations inherited the vices without the ability of the founder. Though the nominal rule of the kings continued for four generations thereafter, the real powers of government were assumed by the mayor of the palace in 642, from which time forward the kings were imbeciles and the names prominent in history are Pepin and Charles Martel, mayors of the palace, the latter of whom commanded in the great battle (732) which turned back the tide of Mohammedan invasion.

The history of Spain under the rule of the Visigoths is obscure. Though they with the Suevi and Alani gained a lodgment there early in the fifth century, it was not until after their defeat by Clovis at Poitiers that they transferred the seat of their government from Gaul to Spain, about 510. The Goths constituted but a small part of the population. Their government, though monarchical, was elective, and the subject Romans were ruled by Roman law. The church early gained a strong hold on the Spanish people, and in course of time the Goths, who were Arians, through motives of policy were led by their king to adopt the orthodox faith. The succession to the throne was the occasion of a great number of civil wars. The people at the time of the Saracen invasion in 711 were divided into a few very rich and a dependent multitude of slaves. They offered but a weak resistance to the Mohammedans, who completed the conquest of the country within the next two years and put a final end to the Visigothic rule. The division of the state for governmental purposes was similar to that of Gaul, the ancient Roman *civitates* being used as the basis of local government.

The long and vigorous reign of Charlemagne, 768 to 814, stands out in bold relief in a long period of darkness. Of his eminent abilities there can be no doubt, and while his morals

lacked much of even an approximation to virtue, he yet was far better than his Merovingian predecessors. He not only restored to the kingdom all that had at any time before belonged to it, but for the first time in history he joined Germany, Gaul, Italy and northern Spain in a single empire. Though his government was administered on substantially the same system as that of his predecessors, it was infused with vitality through his remarkable energy and industry. He was not a stranger to any part of his vast empire. Not only did he visit every quarter in person but his special *Missi Dominici*, traveling legates, were constantly bringing him information of the condition of affairs in every part of the realm. Like all other rulers, who before his time had acquired extensive dominion in the western empire, he felt the charm of the Roman imperial name. In 800 Pope Leo III crowned him in St. Peter's as Augustus, Emperor of the Romans. The receipt by Charles of this title at the hands of the Pope carried with it a recognition on the part of the military ruler of the west of the spiritual supremacy of the Pope, and throughout many succeeding centuries this recognition carried vastly more weight, and the precedent was of vastly more value to the Pope, than the coronation was to Charles, whose dominion had resulted from his own capacity without important aid from the church. In another aspect this recognition of spiritual authority was important. It was followed by a recognition of the need of a moral basis for the exercise of authority. He required all his subjects above the age of twelve to take a new oath of allegiance to him as Emperor, to be administered by the local clergy, who were required to warn all, "That this vow of homage was not merely a promise to be true to the Emperor and to serve him against his enemies, but a promise to live in obedience to God and His laws, according to the best of each man's strength and understanding. It was a vow to abstain from theft, oppression and injustice, no less than from heathen practices and witchcraft, a vow to do no wrong to the churches of God nor to injure widows and orphans, of whom the Emperor is the chosen protector and guardian." He taught submission to the moral law and recognized the

church as the representative of the Holy Empire. The government of Charles, like that of his predecessors, was thoroughly despotic in character. It, like all despotisms, derived its qualities from the ruler. To carry his will into effect he selected men who carried out his policies, and like every other great leader he had a keen perception of the merits and capacities of men. To preserve the system in its vigor the energy and capacity of Charles himself was required. It has been the fate of every despotism to have the successors of a great founder wanting in some, and often in all, the essential qualities which render despotism a refuge from anarchy. Under the weak and good natured reign of his son Louis the empire crumbled. The practice of dividing it as an inheritance among the children of the ruler obtained and, coupled with revolts of local rulers, resulted in the complete dismemberment of the state after the death of Louis. The acceptance of the imperial crown from the hands of the Pope by Charles bore the full measure of its fruits under the reign of the pious and well meaning Louis, who acknowledged the supremacy of the Pope in spiritual affairs without exacting in return, as his father had done, an acknowledgment by the Pope of the temporal superiority of the emperor. The submissiveness of Louis to Papal authority and his exemption of church property and its tenants from taxes and military service, creating the tenure known as *frank almoin*, which required merely prayers for the welfare of the emperor and his children and the empire, was of immense advantage to the church and correspondingly weakened the state. The great empire of Charles was divided among his grandsons, and the Frankish principle of division was continued among their descendants. The right to rule was treated as the property of the ruler, rather than a trust exercised for the good of the people. This breaking into fragments, with constant warfare between rival claimants of territory, became chronic among the Carlovigians, as it had been with the Merovingians.

In the latter part of the eighth century the Vikings made their appearance in England and on the coasts of the Frankish empire. They were a hardy race of navigators, dwelling on

the Danish and Scandinavian peninsulas, whence they issued in growing numbers and with increasing boldness to pillage those parts of the country most accessible from their boats. From the time of Tacitus they had been noted as sailors, and they now appeared as pirates and most determined warriors. In an age when might made right, it is perhaps invidious to designate them by a name which is now so opprobrious. It is difficult to draw a clear line between their robberies and those of the organized forces on the continent. That they were in the lead of all other people as navigators is clear, and it is said that they fought with superior arms and protected by coats of mail. That their object in their raids was plunder rather than the acquisition of land, and that they scattered in numerous fleets and attacked widely distant places under separate leaders, exhibits a difference in methods, if not in principle. Their raids increased in numbers and boldness, till in 911 Charles the Simple granted them an ample district between the Somme and Seine, on condition that it should be held as a fief under his sovereignty. The Norsemen did homage as his vassals, though with ill grace, and accepted the Christian religion. After this settlement the piratical inroads were substantially at an end.

We have seen how, proceeding from Italy as a base, the Roman power was extended in all directions, and how Roman rule was imposed on the natives of Spain, Gaul, Britain and a portion of Germany. We have also seen how incoming waves from the unknown regions of new and unsubdued people swept back from north and east over all the western portion of the empire, how Goths and Lombards became intermingled with the ancient people of Italy, how Vandals, Goths and Suevi were settled in Spain, and all overthrown by the Saracens, how successive irruptions of Germanic people had broken into Gaul, with the final establishment of the great Frankish empire, and how as a result of these movements of people the empire had fallen and the Romans had ceased to be the ruling element in either quarter. In our effort to gain a clear view of the forces which were at work during what is regarded as the dark ages of European history, we have still to trace the

growing power and influence of the church and the monastic institutions. Out of the Asiatic possessions from the inconspicuous Judean province was brought to Rome the religious and moral teachings of a person so obscure as not to be known to the Roman republic of his time. That religion proclaimed the universal brotherhood of man and fatherhood of God. The Jews looked for a temporal ruler in their Messiah, who should establish their supremacy over the other nations of the earth. They failed to grasp the meaning of his teachings. They did not perceive, nor have Christians in succeeding ages realized, that the moral principles he announced contain the vital principle on which human relations everywhere and at all times should be regulated, that these principles are the universal constitution, on which all governments and all laws must be based in order to develop the highest type of human society and the maximum of human happiness. Though Caesar held power of life and death over all his vast empire, and his will was law to the 100,000,000 or more inhabitants of the countries ruled from Rome, Christ's sermon on the mountain to a few followers, unheard and unknown to the great multitude of people of his time, has exercised an influence on the people of after times incomparably superior to that of all the Caesars. Yet its full meaning and significance are but dimly perceived and imperfectly understood, even by the wisest, and to this day rulers and leaders in the most enlightened lands are regarded as exempted from obedience to the golden rule, "Therefore all things whatsoever ye would that men should do to you, do ye even so to them, for this is the law and the prophets." The impression seems to prevail that the law of necessity applies with especial and controlling force to rulers and law makers, and exempts them from obedience to the moral law. The unselfishness and self-sacrificing spirit of Christ are somewhat distasteful to the average man, and self denial is a virtue seldom looked for and more seldom found in high stations.

Whether the moral teachings of Christ be regarded as primarily for the happiness of the souls of men in a future state, or as essential to human welfare in this life, is unimportant for



our present purpose, for we are only concerned with the moral law as a guide to human conduct. There seems little if any room to doubt that Christian doctrines were taught at Rome by the apostles Peter and Paul with some success, and that they gathered about them a community of converts to the Christian faith. In like manner congregations of believers were gained in the great centers of population in the east and in Greece. The leading characteristics of the earliest Christian societies were the spirit of brotherhood and equality, and contempt for power, wealth and social distinction. For the first three centuries Christians were persecuted, and no attempt was made to gain temporal power with Christianity as a foundation. Nothing could present a stronger contrast, than the brutality and viciousness of Roman society as exhibited at the public combats and butcheries in the arena and the licentiousness and depravity in the palace and houses of the wealthiest and most prominent citizens, and the humble and devout Christian societies of the time of Nero. With growth in numbers came increased influence and ambition to lead. As early as 313 the existence of ecclesiastical corporations with common property was recognized by the edict of Milan, and in 321 their right to acquire property by bequest was confirmed. With the conversion of Constantine the days of extreme Christian humility were over, and the clergy labored to add to the wealth and power of the church with such success that, in 370, Valentinian deemed it necessary to prohibit the clergy from receiving bequests from women. Not from any inherent weakness of principles, but from the influences at work on the men who became the representatives of Christianity, the purity of its doctrines became obscured, and the every day worship in the churches became debased to the adoration of images and relics, to worship of the virgin and the saints, of spurious pieces of the true cross and other visible objects, supposed to be possessed of mysterious power by reason of their association with some miraculous manifestation. Purity of life, so distasteful to the fierce and headstrong barbarians, could not be enforced, so in lieu of it the church exacted tribute, penance, and above all faith in the

vicarious atonement, and granted absolution from sins committed. Elaborate ceremonies, altars, images, substitutes for the idolatries of the barbarians, obscured and took the place of the worship of the unseen, living spirit, and of an effort to follow the moral law in its purity. As early as the second century there seems to have been some claim of superiority over other churches put forth by that of Rome. Little by little the Roman bishop assumed authority over the other churches. At the council of Nicaea, 325, the rank of the three patriarchates was established, first, Rome, second, Alexandria, third, Antioch. By the end of the fourth century the claim of precedence had gained such recognition, that questions arising in the various churches of the west were submitted to the Roman bishop, whose decretals were accepted as authoritative, and Innocent I, 402-417, conceived the universal ecclesiastical supremacy of Rome. The establishment of this supremacy in practice was of slow and uneven growth. Leo, 440-461, established the right of appeal by a bishop from the decision of his metropolitan to Rome, and thereby assumed pontifical authority to pass judgment on the acts and claims of the metropolitans as his inferiors. Under Gregory I, 590-604, the territorial possessions of the church were greatly increased, and under his vigorous administration the power and influence of the pontificate strengthened. Prior to Gregory III the privileges of the popes had been recognized and confirmed by the eastern emperor, but in 731 Gregory excommunicated the Iconoclasts, and in return the Emperor confiscated the church properties within the territories which still submitted to his rule. Thenceforth the papal authority ceased to be in any degree dependent on the imperial. In 752 Pepin was anointed and crowned king of the Franks by the papal legate Boniface, and in 754 he handed over to Pope Stephen III an extensive territory, which he had wrested from the Lombards, including Ravenna, to be held and enjoyed by the pontiffs of the apostolic see forever, and this grant was largely increased by his successor Charlemagne. Thus in the course of about 750 years from the days of Peter and Paul, who laid no claim to worldly power, the head of the church extended his power

over the great ecclesiastical organization which had spread over Europe, and became a temporal ruler over a considerable territory. At the end of the eighth century the head of the church was not only a temporal ruler over the papal states in Italy, but he assumed the power to dispense with the observance of the canonical law, under conditions to be determined by himself, and the vast power of conferring privileges on monastic and church establishments throughout the dominions of the western monarchies. The choice of bishops was subjected to his approval and disputes on matters ecclesiastical were appealable to Rome, where full jurisdiction was asserted. The conquests of the Saracens in the east removed the rivalry of Antioch, Jerusalem and Alexandria, and the west became the seat of that faith which was born in Asia. The coronation of Charlemagne by the Pope was an assumption on the part of Leo of spiritual superiority over the ruler of the "Holy Roman Empire." Leo recognized the temporal power of Charles, and in return Charles acknowledged the spiritual rule of Leo. The weak Louis became subservient to the head of the church. Following this exaltation of the head of the church to temporal power came a period of misfortune and of moral degradation, in which the pontificate became a subject of corrupt bargaining, from which it did not recover till the election of Gregory the V, 996-999. Though in course of time despotic characters were developed, the office of Pope was always elective, and the prevailing spirit of the church was democratic.

Another product of the Christian religion was the monastic establishments, which exercised such a profound influence throughout Europe during the darkest period of its history. The life of the ascetic hermit had been recommended by Gautama as that most favorable to spiritual purification, and religious societies, similar to the monastic institutions of the Christians, were formed under his teachings and became very numerous among Buddhists. The leading resemblance of the Christian and Buddhist societies was in the close association of men, whose lives were devoted to religious exercises and aims, dwelling together in celibacy under rigorous rules of

life, to which they voluntarily submitted. The leading difference was, that the doors of the Buddhist institutions were open to pass out as well as in, and the individual was at all times loaded with the burden of his own salvation through good deeds and purification of his spirit, while with the Christians the doors were closed to those who would withdraw, and spiritual salvation was made to depend, not on deeds and individual merit, but on faith and conformity to the requirements of the church. From the most ancient times the life of the hermit has been adopted by men of a certain peculiar cast of mind, and early in the history of Christianity solitary dwellers in the desert gained great renown for sanctity, among the most noted of whom were Paul and Anthony, natives of Egypt in the third and fourth century.

The first great monastic society was founded by Pachomius on the island of Tabennae in the Nile in the first half of the fourth century. Under the rules of the order the monks were distributed into cells, each containing three inmates, known as *syncelli*. A large cluster of such cells was called a *laura*, in which was one common place for meals and assemblies. Work and food were apportioned to each according to his strength, and the dress was regulated, consisting of a linen tunic with a goat skin upper garment, which they were not permitted to take off at meals or in bed, but only when assembled for the eucharist. They were divided into twenty-four groups, and each group into bands of tens and hundreds under decurions and centurions, all under an Abbot, who, as such institutions multiplied, was subject to the Superior. The finances were managed by a steward. Their usual food was bread and water, with occasional oil, salt, fruit and vegetables for luxuries. Meals were eaten in silence, each wearing a cowl to hide his face. They assembled twice daily for common prayer, and for communion on Saturdays and Sundays. They tilled their lands and wove mats, baskets and in course of time manufactured many other articles for sale for the common fund. Pachomius induced his sister to found a convent of nuns under similar rules. At the time of his death Pachomius had 1,400 monks in his own monastery and 7,000 under

his authority. The order spread rapidly in Africa, Asia, and then into Italy and western Europe. By the fifth century the numbers are said to have increased to more than 100,000 in Egypt alone.

In 529 Benedict drew up his celebrated code of rules, which became the law of the very numerous Benedictine monasteries which spread over western Europe. Worship, study, work, obedience, silence and humility, were the leading ideas inculcated. This code was elaborated in seventy-three chapters. It exhibits a strange mixture of excellent principles and vicious ones. Monasteries formed under this code were voluntary associations of men, who were required to dispose of all their private property, and who became equals on entering the society, except that their rules were enforced by an Abbot elected by themselves, and all important matters were decided after consultation with the whole body. In large monasteries there were deans selected for merit, and each monastery had its steward, charged with the keeping of its supplies. All labor was performed by the monks, who took turns in the kitchen. Hours of work, of study and of prayer, were regulated, as were all matters of dress and of eating. Confession of faults was enjoined, penances, fasts and scourgings were imposed for breaches of the rules of the order, with expulsion as the ultimate penalty for persistent misconduct. Guests were entertained by the Abbot in separate apartments, and the monks were not allowed to speak to them, except with special permission. A probation amounting to about a year in all was required of applicants seeking to join the order. All strife and contention were prohibited, and no monk could go out into the world without leave of his Abbot. The system required the exercise of the virtues of industry, study, self denial and the recognition of brotherly equality. These lie at the foundation of all social progress. It also exacted rigid observance of religious forms, tending to evil or good according to the spirit of the individual, and seclusion from the outside, wicked world, which contracted the field of vision and influence and dried up the natural sympathies of the monks, while protecting them from the dreaded contamina-

tion of a corrupt society. It separated the sexes and defied the imperative law of reproduction. In this it prevented that highest and purest human combination, the Christian family, with its voluntary devotion to succeeding generations. Convents were also established for females with similar rules.

The rapid rise of these religious societies was contemporaneous with the decay of Roman power and the tide of Germanic invasion. The monastery with its buildings, its cultivated lands, its work shops and school, became a prominent feature of all Christendom, not only on the continent but in the British Isles as well. It was a republic of peace, industry, study and devotion, amid external surroundings of war, cruelty, indolence and ignorance. It grew in wealth and importance by reason of its corporate constitution and perpetual succession, and the celibacy of its inmates yielded no heirs demanding an inheritance. It offered a refuge to those who wished to shun the hardness of the outer world. Other codes for the government of monastic societies had been formulated before that of Benedict, notably that of Basil, which became generally followed in the east, and numerous modifications of the Benedictine rules were made in after times. Many societies in course of time became rich and licentious. Abbots like other men became fond of power, and the encroachments of monastic holdings on the realms of the rulers excited jealousy and hostility.

With the decline of the empire of Charlemagne and the civil wars and struggles over succession to local authority arose that form of social organization and land tenure known as the feudal system. With the Romans, as we have seen, land was treated as subject to ownership, bargain and sale in much the same manner as chattels, and there is no sharply drawn line in the law between landed and other property. After the Germanic tribes gained settled habitations and recognized title to tracts adjacent to their dwellings, the title of the possessor was a full and perfect one, and this was termed allodial land. Crown lands, conferred on favorites of the sovereign by the kings in later times, were termed benefices, and were held by a tenure which implied at first, and

finally expressed, a compact on the part of the beneficiary to support his benefactor. From the practice of conferring estates by kings upon their followers in times of wars and seizures of the lands of enemies arose the feudal system, which became such a prominent feature of the dark ages. The fundamental idea of it was a close union between lord and vassal for war. The ceremonies of conferring a fief consisted of, 1. Homage. The vassal with head uncovered, belt ungirt and without sword or spurs, kneeling, placed his hands between those of his lord and promised to become his man, from thenceforth to serve him with life and limb and worldly honor, faithfully and loyally, in consideration of the lands which he held under him. Homage could be accepted only by the lord in person. 2. An oath of fealty by the vassal to his lord. 3. Investiture, which consisted in putting the tenant into possession. This was done sometimes on the land by the lord or his deputy, and sometimes by the symbolical delivery of a turf, stone or other symbol.

The first, and perhaps most important obligation assumed by the vassal, was that of military service under his lord. The amount of service which might be demanded in a year depended on the size of the fief and the usage of the time and place. Forty days was the usual term for a knight's fee; during which he must attend with his own equipment and at his own expense. Shorter terms were required for smaller estates. Old men and women must send substitutes on pain of forfeiture or amercement. The terms of the service required indicate the turbulent and disordered state of society. The wars of the lord were mostly with near neighbors, and partook more of the character of forays of bandits than of organized warfare. In some places the obligation of the vassal did not require him to go beyond the lord's territory, or more than a day's journey from it. It was not a system of public defense, but an organization for the private broils of the chief. As incident to feudal tenures the lord exacted: 1. Reliefs. A sum of money required to be paid by the heir of a deceased vassal on investiture with the estate. The amount was not regulated by any fixed law and was often fixed arbi-

trarily by the lord. 2. Fines on alienation by a vassal of his estate. This arose from the necessity for the assent of the lord to an alienation by the vassal. 3. Escheats and forfeitures through failure of heirs or acts or omissions which worked a forfeiture of the tenant's rights, in which cases the estate reverted to the lord, and this was aided by the doctrine of corruption of blood, by which an heir was prohibited from tracing descent through an attainted ancestor. 4. Aids. These were imposed by the lords on various pretexts, notably to raise marriage portions for his sons and daughters, to pay expenses of distant expeditions, to ransom him from captivity, and generally to meet extraordinary demands on him. 5. Wardship. During the minority of the heir the lord became his guardian, and as such had the care of his person and charge of his estate. This incident seems to have been confined to the system in England, Normandy and some parts of Germany, but in France the custody of the land went to the next heir, and of the person to the nearest kinsman who could not inherit. 6. Marriages. In England, Normandy and Germany the lord assumed the right to choose husbands for female wards, and in later times to dictate the marriages of male wards also. The penalty for refusal to comply with the lord's wish was forfeiture of the value of the marriage. These incidents of vassalage were unknown in the earliest stages of feudalism. They are exhibitions of the tendency of those holding superior power to unjustly extend it.

The obligation of the lord to his vassal was to protect him in his possession, and in case of eviction to give him other lands of equal value. Where large estates were granted, subinfeudation followed as a natural sequence, and the vassal in turn granted portions of his estate to sub-tenants, who did homage, swore fealty and gave military service. Thus in time there was developed a chain of tenancies from the king as lord paramount down to the tenants of the smallest holdings. The feudal system was not originally established anywhere by legal enactment of the law-making power of a great state, but was the outgrowth of customs and conditions and the spirit of the times. It therefore was not uniform, but varied in its



incidents and obligations according to local customs. The all pervading essence of it was that the vassal should support his lord, right or wrong, in all his contests, and the lord should protect the vassal in his holding. The system grew up in the ninth and tenth centuries, and by the end of the eleventh had become general over western Europe, and in 1088 a written collection of feudal customs was made by Bearn.

While the system seems to have had its inception in grants of crown lands to followers of the king, the turbulence of the times made it desirable for the holders of allodial or frank tenure lands to gain the protection of the neighboring lord. It therefore became common for the holders of such estates to surrender them to the king or neighboring great lord and take them back as feudal tenures. Not only did laymen generally adopt this course, but monastic and church lands were similarly placed under the military protection of a powerful neighbor. The titles and ranks of European nobility developed from this system. In place of the ancient appointees of the Emperors, who were assigned to duties in a particular district as political representatives of imperial power, there was established a fixed connection between the land and the local lord, which the king could not sever. Under the Roman, Gothic and Frankish emperors, to the time of Charlemagne, there was no necessary connection of political power with title to land. Under the feudal system title to land was the basis of all political power. From villein to king the station, rank and power of each was determined by the relation he sustained to land. Slavery disappeared, and serfdom and villeinage took its place. Men were no longer bought and sold, but the villein was completely at the mercy of the owner of the soil to which he was attached. From the permanence of the relation of the lord to the soil arose a barrier against the arbitrary power of the king. The great vassal could not be displaced or denied his local authority and importance. Behind him stood the strength in arms of his retainers. The spirit of the times, concurring with the genius of feudalism, gave to the great landholders an importance and permanence of power, which ripened into that proud titled aristocracy,

that still exhibits such pretensions of superiority. After the noble orders had become fairly established by transmission of estates and power from one generation to another, and an idea of distinctions of blood and family had taken firm root, kings assumed the power of conferring rank on their favorites, independent of territorial possessions. Churchmen did not escape the all pervading distinctions, which rated the idle nobility so far above the toiling or trading community. Prelates and Abbots ranked as feudal nobles, and swore fealty for their lands, over which they exercised the same power and jurisdiction as the lay nobles. While the lands of churches and monasteries were not generally military tenures, it was not uncommon for them to furnish their quotas to take part in the sovereign's wars.

Among the early Germanic tribes all public questions were determined in a general assembly of freemen. The custom of holding general assemblies was continued by the Lombards in Italy and by the Franks as late as 882. The capitularies of Charlemagne purport to have been ordained by the king with general consent. Thus the law-making power was regarded as still residing in the body of freemen through the Merovingian and until the decadence of the Carolingian dynasty. With the establishment of the feudal system legislation ceased in France, and for three centuries no general laws were established. The king conferred as much as he pleased with his courtiers and took such advice as suited him. The great nobles in like manner were surrounded by their retainers. To so low a state was the central authority reduced that Louis IX in his Establishments says that the king cannot declare any new law in the territory of a baron without his consent, nor can the baron do so in that of his vassal. The nearest approach to the exercise of legislative authority was the resolutions and agreements of congresses of neighboring lords, who undertook to carry out an agreed policy in their respective dominions. Ecclesiastical councils, of representatives of the churches and religious orders, partook more of the character of legislative bodies, and were more representative in composition than any congress of nobles. Their

ordinances were of course wanting in the sanction of civil legislative power, but the church had its own system of enforcing obedience to its behests by working on the credulity and superstition of an ignorant laity. During the times of which we are now speaking there was no general system of taxation. The king and nobility depended on their estates and perquisites of feudal tenures to maintain their establishments. As the vassal furnished his own equipment and paid his own expenses in the wars, there was no expense connected with the military establishment.

The feudal system was not adapted to urban conditions, commerce or industrial pursuits. The feudal lord was a robber and a tyrant, who fortified his castle and encased himself in armor, that he might maintain his advantage over the weak and defenseless. In the cities, especially of Italy, the spirit of republicanism still survived, though often supplanted by despotic rule of one kind or another. Venice from its sea-protected islands struggled into existence first with twelve tribunes, elected annually, to guide the affairs of state. In 697 they elected a chief magistrate, called the Doge, who was general and judge with powers not definitely limited, but who acted in important matters with the concurrence of a general assembly. He was sometimes permitted to associate his son with him. In 1032 limitations were placed on his power. He was prohibited from associating his son in the government, and required to act with the consent of two counselors, and to counsel with the principal citizens on important occasions. In 1172 a radical change was effected, and a great council of 480 citizens was established. This council appointed the doge and other important officers. At first the members of this body were selected by tribunes chosen by the people, but in course of time they assumed the power of confirming or rejecting their own successors, and ultimately membership became hereditary. In 1179 the exercise of criminal jurisdiction was given to a council of forty members, chosen annually. The general care of the state was given in charge to sixty councilors, over whom the doge presided. In the fourteenth century this council was doubled in numbers. The senate was

annually renewed by the great council. From this body six members were selected, who, acting with the doge as an executive board, treated with foreign states, convoked councils and performed administrative duties. On his election the doge was required to take an oath to observe many restrictions on his power. The method of electing a doge was an exceedingly complicated combination of choice by lot and by ballot through the medium of successive sets of electors. In 1296 the great council was closed, and thereafter all but the families then members of it were excluded. In 1310 the famous council of ten was created, who, in concert with the doge and his six counselors, became the controlling force in the state. Under this system the government was vigorously, but tyrannically, conducted. The power, wealth, commerce and influence of Venice during the darkest period of European history bear witness to the superior vitality of an organization which carries to its head a constant impulse from the whole people, or a large and representative portion of them. No other European state endured so long, or so completely preserved its integrity during those years of darkness. The unfailing tendency, however, for those on whom power is conferred to extend it, is well illustrated by its history, as also is the decay which always attends a rigid stratification of society and the rule of an hereditary aristocracy, which lives without work and despises and despoils an ignorant and oppressed proletariat. The vices of the Venetian nobility were the vices which tyrants exhibit everywhere.

At Rome the idea that the people were the source of all political power never became wholly extinct. The spirit of the church, if not of the Popes, was distinctly republican. The early bishops and their successors, the Popes, were elected, and the idea of hereditary power never obtained in the church. The celibacy of the clergy effectually prevented it. True there were times of gross corruption in the elections, times when the papal chair was filled by fraud, by bribery and by violence. These evils are not strangers to any form of government or system of social or religious organization. They are manifestations of human weakness and vice. Above the

church at all times shone the pure light of the teachings of Christ, enjoining universal brotherhood and love and denouncing every form of oppression and wrong doing. No system of tyranny could justify itself by any recorded word of His. He never attempted to order or advise any form or system of human government. "Be not ye called Rabbi, for one is your master, even Christ, and all ye are brethren. And call no man your father upon the earth, for one is your Father which is in heaven. Neither be ye called masters, for one is your master, even Christ. But he that is greatest among you shall be your servant, and whosoever shall exalt himself shall be abased, and he that shall humble himself shall be exalted." Absolute equality and unselfishness among mortals is the spirit of all his teachings. The lofty ideal of voluntary obedience to the moral law as the ordinance of God, the sole ruler of all, was not sullied by any attempt at creating a government to be administered by men and subject to all human imperfections. Nor did he attempt to formulate rules of conduct to cover each specific case, and much less to prescribe rules for the government of property rights. With the single exception of his teachings with reference to family relations and the sanctity and indissolubility of the matrimonial bond, he declared no rules of civil conduct which would be ordinarily denominated laws. His teachings were of the moral principles by which every human law, regulation and act, must be tested. Rewards and punishments in a future state of being were promised as the leading incentives to righteousness in this life.

The ancient spirit of Roman republicanism also lingered in the great city, and throughout the darkest of the succeeding centuries there were shadows of consuls, senates, tribunes and other ancient officials of the republic. These temporary and relatively insignificant revivals of the ancient system furnish little or nothing novel or worthy of extended notice here. In the tenth and eleventh centuries the cities of Lombardy, Milan, Pisa, Pavia, Genoa, Florence and other Italian cities, regulated their affairs by municipal officers, chosen by themselves. To trace the history of each is impracticable and perhaps

would be unprofitable, except as they exhibit the superior vigor and prosperity of communities which enlist in public affairs the combined energies of many, over the petty despotisms of the feudal lords. These cities were subject to more or less domination by the emperors, kings and dukes, who from time to time asserted and maintained authority over them with more or less strictness. The superior advantages enjoyed by the people of these cities stand out in strong contrast to the misery and poverty of the villeins under the feudal barons. Thus Milan in the middle of the twelfth century was far more populous than any of the capitals of the great kingdoms. It was defended by strong walls and deep trenches, within which an industrious population dwelt in security, each enjoying the fruits of his own industry and foresight. These little republics were not exempt from such jealousies and rivalries as prevailed among the ancient cities of Greece, and destructive wars were waged from time to time. Against the tyranny of Frederick Barbarossa the Lombard cities united after the destruction of Milan, and gained victory and independence, but their own jealousies and animosities in turn destroyed the league, which had protected them against an external foe. A peculiar and most unfortunate state of affairs developed about the year 1200 from the division of the different cities, and of the citizens of each city, between the factions of the Guelphs and Ghebelins. As no well defined matter of principle or even of policy or interest divided these factions, but merely claims of rival princely houses, malice and prejudice held full sway, and no ground for hostility existed which reason or mutual concessions could remove, city was arrayed against city in malignant strife, and in each city faction warred with faction the more bitterly because without justifiable object or excuse. Notwithstanding the rivalries and wars of these petty republics, their wealth and prosperity, their public works and private establishments, present in strong contrast the difference between a free republican city and rural despotism. The city governments were generally modeled largely after that of ancient Rome.

While Frederick I maintained his rule over the Lombard

cities, he placed over each a chief officer, called a *podesta*, in place of the elective consuls. After his expulsion the cities quite generally adopted the plan of electing a *podesta* from among the citizens of a neighboring city, whose functions, though varying in different cities and at different times, were mainly judicial. He was forbidden to marry in the city or have intimate relations with any of the citizens. The purpose of this was to have a judge who was free from bias or factional prejudice.

The feudal system was not adapted to urban life or commercial pursuits, and the organization of society in the towns never conformed to it. Not only in Italy, but in France and Germany, there was at all times a spirit of independence and an assertion of the right to local government in opposition to the tyranny of feudalism. Along the Rhine, as well as in other parts of both countries, the feudal barons in their fortified strongholds became robber chiefs. The people gathered in the towns formed trades guilds, chose councils, and by offering an asylum to all who chose to join them, grew in numbers and in power.

On the deposition of Charles the Fat in 888 the Frankish empire was divided, and the separate existence of the German empire under Arnulf commenced. In accordance with ancient customs election was the only title to chief power. Just how or by what classes of people the choice was made is not made very clear, but it seems to have been in a general assembly of the five nations of Germany. The German emperors assumed to be the successors of the Roman emperors, and they claimed authority over the Holy Roman Empire, which bore a shadowy existence through this long period of strife and disorder, with little or no real power beyond the immediate domain of the holder of the imperial title. The actual choice of succeeding emperors appears to have been made by the nobility, ratified perhaps to some extent by general assemblies of the people, but with the growth of the feudal system the actual power of the emperor became so slight that it was scarcely sought after. At the election of Lothaire in 1124 there was what is termed a pretaxation, or selection of a

candidate by ten persons, in whose choice the princes agreed to acquiesce. Later the electoral college was composed of seven members, the archbishops of Mentz, Treves and Cologne, the duke of Saxony, the count Palatine of the Rhine, the king of Bohemia, and the margrave of Brandenburg. The powers of the emperor are not easily stated, nor were they ever clearly defined, but rather dependent on the character of the person filling the office and the temper of the people at the time. His claim of sovereignty over Italy was given more or less recognition, but never amounted to an effectual direction of affairs. The spirit of the feudal lords was such throughout Germany, as well as all parts of Europe where feudalism prevailed, as to deny the right of any superior to interfere with local affairs in their dominions. The feudal baron was the political entity. He waged war when, with whom, and as he pleased. That now clearly recognized distinctive function of sovereignty, the right to form alliances and make war or peace, was then freely exercised by each feudal landlord. The Emperor of Germany, the French king and other potentates, were powerless to prevent the private wars among their vassals, nor were they able to command their support in contests with outside foes. For three centuries after the breaking up of the Empire of Charlemagne the history of Europe is not to be traced as that of organized states with settled governments and laws. The first and far most prominent political fact was the growing power of the feudal lords. That power was exercised singly by each in accordance with his own sense of honor. Pride, arrogance, disregard of human life, detestation of labor, of learning and of all useful callings, were the prevailing sentiments of the nobility. It is indeed difficult to detect anything good in the system. It was as if the free Germanic tribes had been converted into petty despotisms, in which the freemen had become serfs and the chief a tyrant. The cities and towns of Germany and France were of little political importance in those times, as compared with the great landlords and their vassals, and most of them found it necessary to place themselves under the protection, which often meant at the mercy,



of a neighboring chief. In Italy alone the feudal barons were placed under some restraints, and in many instances required to dwell within the town and submit to its regulations. The church and the monastic establishments preserved whatever remained of learning, and alone afforded a bond of union throughout the warring fragments of the ancient empire. Within the monastery labor, study, equality and self-denial were still the precepts, if not generally the practice. The barbarity of the age, however, had its influence on these institutions. Superstitions derived from ancient and impure worship were imported and made part of the stock in trade of the clergy. The pure morality of Christ was too lofty for practical use in an age so degraded, and saints and images, sticks of wood labeled pieces of the true cross, bones of saints and martyrs, and other objects to which pious fraud could give fictitious virtue, were made objects of worship and held forth as possessing miraculous powers. The vice of avarice also seized fast hold of the church of him who so vigorously denounced it, and absolution for the vilest crimes was granted by the church to pious criminals who would pay sufficiently for it. Superstition always has a firm hold on him who feels that his conduct is vicious, and the abbots and clergy of that age found no difficulty in profiting largely from the superstitious fears of the multitude. Not only were the holdings of religious establishments so increased as to cover a large part of the entire country, but the power and influence of the church became predominant. This would have been of incalculable benefit if pure Christian morality could have been promoted, but with increase of wealth came corruption of the church, and in many places monasteries and clergymen's houses became seats of vice and immorality.

Theoretically the monastery was a refuge for the man of peace, who would withdraw from the conflicts of a bloody age, but the spirit of war could not be wholly excluded, and abbots often found it necessary, or deemed it expedient, to arm their followers and take part in the local wars. Nor were the church properties always respected by the barons. Pretexts were invented by the powerful to seize the lands held

to pious uses by force, and there was no superior authority with sufficient strength to insure redress. Corrupt as the religious institutions undoubtedly were, they still rendered succeeding ages an inestimable service. Of all the treasures which one age can pass down to another, that of knowledge and wisdom, gained from experience and the inspirations of religious teachers, poets and philosophers, is of the most inestimable value. To the church and the monasteries we owe, not merely the preservation and transmission to our times of the sacred writings, but also, the perishable manuscripts in which were written the learning of the heathen world, which the art of printing has now made accessible to the educated people of all nations. Through them, perhaps more than any other medium, the light of the Roman jurisprudence has been rekindled to become again the basis of judicial action throughout Europe. •

The political importance of the barons in France, where the feudal system attained its most complete development, is exhibited by the following functions and exemptions which they asserted. 1. Power to coin money. 2. To wage private war. 3. Exemption from all taxation and tribute except the feudal aids. 4. Freedom from legislative control. 5. The exclusive exercise of judicial functions in their dominions. A system recognizing these claims necessarily left the central authority a mere shadow. The only semblance of general legislative authority seems to have been that exercised by general councils of the church. With all its tyranny the feudal system contained some germs of social order and civil liberty. It recognized a definite obligation resting on the lord to protect the vassal, and was based on the idea, if not the substance, of mutual support and advantage. The terms of the relation were fixed by general understanding, if not always faithfully observed. Within his demesne justice was administered publicly by the lord in accordance with the customs of the times, and all mere arbitrary power was theoretically denied, though actually exercised. The system flourished for about three centuries and begun to wane. The forces which undermined it proceeded from two directions, the sovereigns

and the towns. The king could not maintain his wars successfully with the mere temporary support of his vassals. Longer terms of service and money for supplies were indispensable to the reduction of a fortified town. Long service could only be gained with pay. Pay could only be afforded by a general system of contribution or taxation. National spirit, stimulated by the crusades, and distant wars, inclined public sentiment toward strengthening the hands of the kings.

At the other end we find the towns, seats of industry, imbued with a more democratic spirit and inclined to resist the tyranny of the barons. Productive industry and peaceful inclinations tended to a greater increase of numbers than that among the retainers of those whose only calling was war. Not only did the numbers of the townsmen increase more rapidly through natural multiplication, but they steadily gained at the expense of the nobles through the settlement of villeins and small feudatories in the towns, where they were generally welcomed and accorded burghers' privileges. The feudal system, operating throughout the same great field as the monastic and church system, reduced the power of the kings to a mere shadow of the absolutism of the ancient emperors. The popes persistently advanced their claims of spiritual supervision, and in the exercise of religious discipline exerted in fact a powerful influence, and often an arbitrary supervision, over secular affairs. The papal power was rapidly extended by encouraging appeals to Rome in all disputes arising in the church, and then of controversies between contending princes. Thus Lothair was taken to task for divorcing his wife and excommunicated by Pope Nicholas I. Excommunication in some states of society might amount to little more than an expression of displeasure, but in an age of superstition and of general submission to the church it was a heavy penalty depriving the offender of all participation in the ministrations of the church and of all communion with its members. It in effect singled him out as an object of scorn and detestation to be shunned and condemned by all mankind. The proud Lothair at first treated the action of the Pope with contempt,

but was forced to humbly sue at the feet of Adrian II for pardon and absolution. The law also added to the force of the papal authority a disqualification of the excommunicated person to testify as a witness in a court of justice, or even to bring an action. A yet more severe weapon wielded by the head of the church was the interdict, by which not only the offender, but all his subjects, were deprived of religious privileges. The churches throughout his dominions were closed, the bells silenced and the dead left unburied. No rites but those of baptism and extreme unction could be performed. The penalty fell on the unoffending subjects with the same severity as on the guilty ruler. Though the power of the church was sometimes successfully resisted, and though kings sometimes in turn ruled the weaker popes and used them as instruments for their own aggrandisement, in an age when all learning was the property of the church and superstitious veneration of pope and clergy was so general, the interdict was an effectual weapon for the execution of papal commands.

From the anarchistic conditions which prevailed when feudalism was at its height modern European society has been evolved. The political map of that continent has been subject to many and sweeping changes, and still shows many small states, constantly armed and expectant of war. No firm bond yet binds the people of different nations to each other. Narrowness, distrust and inherited hatreds, still bar the way to sensible combination and the acceptance by rival states of mutual good-will and good deeds. Yet from the disorganized and chaotic mass of the dark ages states with larger territory, more varied popular elements, and better principles have grown up. These we must examine separately and in detail.

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## CHAPTER XVI

### RUSSIA

Our earliest introduction to the inhabitants of that vast territory now designated as Russia comes through the Greeks, and exhibits many tribes with varied characteristics. The name Scythians was applied quite generally to the nomads of the great plains, and also to those who tilled the soil in the rich valley of the Dnieper. Many early tribes are mentioned by Herodotus and other ancient writers, the relationship of which to each other or to modern people it is not our purpose to trace. From the earliest times central and north-western Asia has been a breeding ground, from which has issued barbaric hordes that have pushed their way in all directions and especially across the flat grassy Russian plains into Europe. Their movements have been in main migrations of tribes with all their families, cattle and belongings, seeking to escape enemies or searching for pasturage or pillage. Among the characteristics of most of these people, when first mentioned in history, are bravery, cruelty, superstition and ignorance. They scalped prisoners, drank the blood of enemies killed in battle, sacrificed slaves and horses at the funerals of dead kings, and had other horrible customs, yet it would hardly be safe to give this as a general statement of the manners which prevailed for any long period of time. It can be said however that cruelty and indiscriminate slaughter of conquered enemies has generally attended the conquests made by the swarms which from time to time have issued from this breeding ground. The peculiarities of southern Russia have rendered it possible for Asiatic hordes to pass quickly with horses, cattle and all their households from their Asiatic seats into the heart of Europe. Level plains with ample pasturage, unobstructed by mountains or great forests, have afforded a broad highway, open to all who might choose to travel it.

Pastoral tribes, moving with herds and tents, might be equally at home anywhere from the mountain slopes of central Asia to the Dnieper. The prevalence of periodical droughts and resulting failure of vegetation have compelled frequent migrations, and the necessities of their situations have driven tribe after tribe along this highway. It was the people dwelling in, or who passed through this grass land, that came in contact with Greeks and Romans and successively invaded western Europe. The dwellers in the wooded country lying to the north never came in contact with either ancient Greeks or Romans.

The foundations of the government which has since extended from the Baltic to the Pacific and from the Arctic beyond the Black Sea, were laid in the forest regions from which the great rivers flowing into the Baltic, Black and Caspian seas have their sources. The dominant race of Russia is the Slav, classed as Aryans and allied to the Germans. The next most important elements are Finns and Tartars. Intermixture has produced a composite of which the prevailing characteristics are Slavic.

The Slavs as first made known to us were at a very low stage of social development. The family was the political and social unit with the father as its patriarchal head. Polygamy was allowed, and wives were captured, with or without their consent, as a part of the marriage ceremony. The *mir* was an expansion of the family and under the direction of a council of elders called *vetche*. In its deliberations there was little of order, and a decision required the concurrence of all. The idea of the right of a majority to rule did not obtain, but the majority were forced to make such concessions to the minority as would induce them to concur, or to use some other effectual means of enforcing acquiescence. The village lands were owned in common, except the *dvor* or inclosure immediately about the house. A group of *mirs* was called a *volost* or *pagost* and was governed by a council of elders of the *mirs*. A chief of the *volost* chosen by the elders was a leader in war but with little or no power in peace. Any further union of different *volosts* was temporary, and no estab-

lished authority over tribe or race was recognized. They tilled the soil, used coined money of other nations, and had considerable commerce. They were workers of iron and made swords for export.

The foundation of the Russian state starts from the accepted date of 862, when the Variagi came to rule over the Slavs of Novgorod and vicinity, by invitation of the people it is said. Rurik, his two brothers and their military following came to establish order and defend the Slavs. Rurik first settled at Lake Ladoga, and at Novgorod after the death of his brothers. Two other Variagi went down to Kief and became leaders of the Poliane. After the death of Rurik his brother Oleg subdued Kief, extended his dominion over most of the Russian Slavs and in 907 attacked Constantinople and imposed tribute on it. Igor, son of Rurik, succeeded Oleg, and on his death his widow Olga became regent during the minority of her son Sviatoslaf. She began her reign with barbarous massacres of the Drevliane, by some of whom her husband had been assassinated, and was afterward converted to Christianity, but her son refused to follow her example and but few of her subjects accepted her faith. On the death of Sviatoslaf the empire was divided among his three sons, who ruled respectively at Kief, Novgorod and over the Drevliane. Civil wars followed, resulting in the death of two of the brothers and the consolidation of the whole under Vladimir. He was a cruel, sensual despot, who took five wives and kept concubines by the hundreds. He became dissatisfied with the old religion and made war on Constantinople to conquer the Greek Christianity. As terms of peace he demanded the daughter of the Greek emperor in marriage and accepted baptism. He then proceeded in a truly autocratic manner to throw down the ancient idols and march the people into the rivers to be baptized. His conversion is said to have been followed by a radical reformation of character, by the founding of schools and many other works for the good of the people. Vladimir partitioned his dominions among his sons and even gave a portion to a nephew. They, as usual, fought among themselves, and Iaroslaf became master of all. His reign

from 1015 to 1054 was a brilliant one and placed Russia among the leading states of Europe. He promulgated the first code of Russian laws. It recognized the avengers of blood and fixed the amount of money to be paid for crime; allowed judicial duels, trial by ordeal of red hot irons and boiling water, by oath with compurgators, and also provided for trial by a judge and jury of twelve men. Punishment by death, whipping or imprisonment was unknown. The rule of the Variagi was not of autocrats with firmly established authority, exercised through a system of subordinate officials. The prince occupied relations similar to the Norse and Frank leaders with their bands of military companions and followers called the *drujina*. They were his council of state and his guard. From them he chose governors of towns and constituted courts of justice. They ate at his table and exercised a powerful influence on his policy. Sviatoslaf answered his mother Olga's exhortations to become a Christian by saying that his *drujina* would mock him. He owed his strength to them and in order to retain it was forced to consult their wishes. They were free to transfer their allegiance to another when they chose. Prince and *drujina* were engaged in a common enterprise and lived from the tribute they extorted. This was fixed arbitrarily, and Igor lost his life by attempting to force further tribute from the Drevliane, after he had fleeced them once. The *drujina* was divided into three classes, of whom the *boyars* were the highest. What commerce there was was carried on by the prince and his armed warriors. The mass of the population were peasants—*muzhiks*, and slaves. The leading city in the time of Rurik and for a considerable period thereafter was Novgorod, which is said to have then had 100,000 inhabitants. It was a republic with ruling power in the assembly of citizens, the *vetche*, which was convoked by ringing the bell. They dictated terms to princes and received such rulers as they pleased and on their own conditions. Iaroslaf confirmed and defined the privileges of Novgorod, which subsequent princes were required to take an oath to observe. The revenues he might exact were strictly limited, as also were his judicial and political functions. He



could not execute justice without the concurrence of the *posadnik*, nor reverse a judgment nor take a suit away from the city. In conflicts between citizens and the prince's men a mixed tribunal decided. He could impose no garrison nor colony on them. The chief officer of the city was the *posadnik*. He was charged with the defense of civic rights, and shared with the prince the judicial powers and the apportionment of taxes. He governed the city, commanded the army and directed its diplomacy. The next in authority was the *teusatski*, who was military chief and entrusted with the defense of the rights of the people as a sort of tribune. Novgorod also preserved its spiritual independence by electing its own archbishop, who ranked among the chief dignitaries of the city. The citizens not only elected but retained the power to depose him. Novgorod became a German market, and German settlements were made not only at Novgorod but also at Ladoga and Pskof. Their markets were protected by stockades, and they maintained a monopoly of the western trade. Pskof and Viatka developed later, about the twelfth century, as little republics similarly constituted to Novgorod. The period following the death of Iaroslaf in 1054 till the appearance of the Tartars in 1224 was one of fierce and cruel wars, due largely to the division of the country among the heirs of deceased princes, aggravated by a conflict as to the rule of inheritance between the old Slavonic leadership of the oldest member of the family, by which brother succeeded brother, and the claims of the sons. From the dreary accounts of bloody cruelty and constant wars no new lesson can be drawn. It has had its counterpart in the history of nearly every nation on earth. The advent of the Mongols in 1224 marks the beginning of an important epoch in Russian history. The dominion of Genghis Kahn had already been extended over Manchuria, Northern China, central and western Asia. Nothing could exceed the fierceness and barbarity of his conquests. Indiscriminate slaughter, rapine, destruction of cities and property, death, desolation and ruin everywhere, were the penalties of resistance, and submission often gained no protection. His armies were recruited from all nations, and with

prestige once established he drew to his aid a heterogeneous army, made up from all the nations with which he came in contact. Against his hordes the ever jealous and warring petty princes, who ruled in the dismembered states of Russia, could oppose no effectual resistance. The Russians of that time were not very superior in their rules of warfare to the Mongols. When the ambassadors of the latter came to them asking that they abstain from interference in their contest with the Paluvtsin, the Russians responded by killing the ambassadors. In the battle which followed the Russian army was annihilated. This battle however was not followed by the immediate subjugation of any large territory. The Mongol hordes returned to the east, where they were occupied with other conquests. In 1237 Oktai, one of the sons and successors of Genghis, sent his nephew Batu with an immense army into Russia. He quickly overran the grass country of the south and spread ruin and desolation everywhere. His army penetrated the forests to within fifty miles of Novgorod. Mangu, a grandson of Genghis, took and destroyed Kief and put its people to the sword. The difficulties of a hilly timbered country impeded the progress of a horde accustomed to the open plains, and the obstinate defense of Olmutz in Moravia checked their advance. The death of Oktai recalled Batu to the east, and the wave of conquest had reached its western limit. Though they passed through Hungary into Germany, they gained no permanent foothold beyond Russia. Batu established his capital at Sarai on the lower Volga, where as representative of the great Kahn he ruled in barbaric splendor. By the persuasion of Alexander Nevski Novgorod paid tribute to the Mongols. Russian princes were required to appear at the capital of the Golden Horde and do homage to its chief. In many instances they were compelled to appear in the court of the Great Kahn on the further side of Asia. The rule of the Mongols was that of military chiefs, interested in extorting tribute and extending their power, but taking no interest in the local affairs of the people. They left those they spared with their social system, their local courts and laws unchanged, and with possession of their lands; which their nomad con-

querors had no desire to cultivate. The conquered people were required to pay a capitation-tax, levied on rich and poor alike, to be paid in money or furs. The revenue was collected by farmers supported by the agents and guards of the Kahn. In course of time the princes of Moscow undertook the collection from their own subjects. The Russians were also required to furnish their quota of troops. While the Russian princes were allowed to retain their places, it was as subjects of the great Kahn, to whose decision they were required to submit their controversies instead of fighting them out. The corruption of the Kahn's court is reputed to have been extreme. The Mongols were converted to Mohammedanism about 1272. After they ceased to extend their dominions by conquest, their manners softened and we hear no more of their extreme ferocity. During the time of their ascendancy the Russians waged successful war with the Swedes and Livonians and strengthened their position on the west and north. With the rise of Poland there was a tendency to Russian concentration about Moscow.

In the reign of Ivan III the Muscovite autocracy began to again consolidate the Russian states. Novgorod had changed from a democracy, devoted to the common welfare, to an aristocracy divided into discordant factions. In 1470 it submitted to the sway of Ivan. By assuming the rôle of judge between the warring factions he took away from them their ancient and highly prized privilege of determining all their causes at home. They rebelled and he subdued them and finally abolished the *vetche* and *posadnik*, and in 1478 the republic of Novgorod ceased to exist. The Tartar empire had broken into fragments, and Ivan finally threw off the yoke of the Horde. Vasili Ivanovitch took away the liberties of Pskof as his father had those of Novgorod, abolished its *vetche*, carried off its bell, placed his lieutenant in it as governor and transplanted its principal citizens in remote parts, as his father had those of Novgorod. Ivan IV, the terrible, extended the boundaries of his empire and at the same time hardened the autocracy. His merciless executions were numbered by thousands and included many of the proudest *boyars* of the empire.

In 1556 he assembled the States General for the first time, and he was the organizer of the *strelitz* or National Guard. The long and vigorous reigns of Ivan III, Vasili and Ivan IV, extending from 1462 to 1584, witnessed the consolidation of the empire, the termination of the policy of dividing it as an inheritance and the centralization of power in the hands of the Czar. The policy of these monarchs was mainly directed toward the firm establishment of the power of the Czar over the nobility. The *drujina*, who were his companions in the palace in peace and in the camp in war, had no taste for administrative details, and in the organization of the bureaucratic system, through which the central power acts on the multitude, it became necessary to call in the more humble and more scholarly sons of merchants and priests. A great number of these bureaus, twenty to thirty, with varying and ill-defined functions were instituted. One had charge of supplying the table of the Czar, the princes of the blood and nobles whom he fed. Others looked after other domestic and court matters. Then there were the *prikazin* of the palace, of the revenue, of secret affairs, petitions, posts, police, buildings, slaves, monasteries, army, embassies and of the provinces. The revenues were derived from the products of crown lands, paid in kind or in money, from a tax on corn, on fires, customs, crown taverns, fines and confiscations. Certain branches of trade were also monopolized by the Czar and used as a means of extorting money from the merchants.

Three grades of courts of justice were established, that of the *starosta* of the district, a magistrate for every hundred plows, the *voievod* in the chief city of each province and the Supreme Court of Moscow. Trials were had on written or oral proofs, a party being allowed to testify in the absence of other proof, or by judicial combat. Debtors were treated with the greatest rigor. An insolvent was liable to be flogged daily for thirty or forty days, after which, if no one would pay his debts, he was sold and his wife and children hired out to service. Persons charged with theft, murder or treason were subjected to a great variety of tortures. Heretics and sorcerers were burned. Counterfeiters had hot metal poured down

their throats. These were for the humble subjects. A nobleman who slew a *mujik* was only fined or whipped, and if he killed his slave there was no penalty, for he might do as he pleased with his chattel. The church was made subservient to the Czar, and the clergy were instructed in the performance of imposing ceremonies, but knew little of religion or morality.

The army was mostly cavalry. The imperial guard of about eight thousand was made up of young courtiers. All the nobles of the empire, counted at about eighty thousand, served on horseback and defrayed their expenses from the revenues of their lands. The levy of the free peasants amounted to about three hundred thousand. The *strelitzi*, organized by Ivan IV and kept at Moscow, numbered twelve thousand. Many foreigners were taken into the service. Soldiers furnished their own rations mainly for short campaigns. Diplomatic relations were established with other countries of Europe. The lower orders of Russia were made up of: 1, chattel slaves; 2, peasants attached to the lands of the nobles, legally free in person but bound to till their masters' lands, and 3, free cultivators, who had the right to move from place to place and change masters. The second class was by far the most numerous. These considered themselves the real proprietors of the land, not as individuals, but as communities, *mirs*. The *mir*, not the individual, paid taxes to the Czar and dues to the landlord. The towns were governed either by a *voievodni*, appointed by the prince, or a *starosta*, elected by the assembly from among the gentry. In assessing the imposts the *starosta* convoked the elders of the towns and rural *mirs*. In the family the father had arbitrary power over wife, children and sons' wives.

The nobleman always had a retinue of slaves, which he kept about his person and ruled with such rigor as accorded with his disposition. The practice of secluding the women at home and veiling when away prevailed. Drunkenness and debauchery were common in a state of society where illiteracy was almost universal. Superstition and ignorance, there as elsewhere, were inseparable companions. Holy water and relics were more relied on for miraculous cures than the medicines of the physicians, and were perhaps safer in the

then existing state of the profession. During the reign of Feodor, son of Ivan IV, the regent Boris Gudenof promulgated the first Ukase forbidding peasants to remove from one estate to another. This was done in the interest of the poor nobility, to prevent the great ones from drawing away the laborers and thereby leaving their estates uncultivated. The number of farmers being inadequate to till more than a small part of the land, the great lords by offering superior advantages could prevent the cultivation of the small estates. The purpose of Boris in this order was to enable the poorer nobility to render military service and defray their expenses, which they could not do without the aid of the serfs. After the death of Feodor, who was mentally so weak as to really exercise no authority, and of his brother Dimitry who was probably assassinated, the royal line failed and a time of turbulence ensued. For a very short time Vladislav of Poland was in possession of Moscow and recognized by the boyars as Czar, but, led by Minin the butcher of Kozma, the Russians gathered and drove out the Poles. Polish dominion was hardly a reality and had no effect whatever on the growth of the autocracy.

In 1613 a great national assembly gathered at Moscow, composed of church dignitaries, and delegates of the nobles, the merchants, towns and districts. Michael Romanof, a youth of fifteen, was elected Czar, receiving all the votes, and became the founder of the existing dynasty. By raising his father, Philaret, to the rank of patriarch and associating him in the administration of the government Michael was greatly strengthened. From the companions and military followers of the early princes there had developed a proud nobility, jealous and contentious over questions of precedence. Each insisted on maintaining rank equal or superior to that attained by any of his ancestors, and refused to accept a public station lower than the highest held by any of his predecessors. Contentions over these matters occasioned ceaseless strife and annoyance at all great gatherings. Feodor III (1676 to 1682) resolved to put an end to this trouble. He required all the noble families to deliver into court their pedigrees, that

they might be examined, on the pretext that he wished to correct errors in them. He then convoked the nobles and with the assistance of the clergy burned all the books of pedigrees before their eyes.

This was soon followed by Peter the Great (1689-1725) with an abolition of all nobility, except that based on public service, civil or military. Though thoroughly saturated with the spirit of autocracy and accustomed to use his arbitrary powers without mercy, Peter was still a great reformer of the most practical kind. He perceived the superior industrial and commercial development of Western Europe, and with the spirit of the earnest searcher for knowledge he strove to learn their ways and their arts, not their speculative philosophy or forms of government. He traveled into other lands and even worked as an apprentice in a ship yard in Holland. His eyes were opened to some of the most serious defects of the Russian system and some of the wrongs habitually inflicted on the weak. He put an end to the seclusion of women and introduced western fashions of dress and manners. He abolished the flogging of insolvent debtors and the patriarchate. He remodelled the organization of the army in accordance with western methods and began the construction of a navy. He founded St. Petersburg on the Neva, whence he could communicate with the outside world by sea, having wrested the northern country from the Swedes. He brought into the empire artisans of all classes from every country to instruct his subjects in manufacturing and ship building. He encouraged trading and divided the merchants into guilds. But with all his innovations he jealously maintained the autocracy, applied the knout and the axe as he deemed best.

Though the history of the succession of rulers from the time of Michael shows the usual incidents of intrigues, murders, factions and palace troubles of various kinds, the central idea of an autocracy with unlimited power has been steadily asserted by the Czars and acquiesced in by the nation. The system of administration has been shaped to effectuate autocratic rule. The policy of conquest, colonization and Russianizing has been steadily and successfully adhered to, with the

result that the Czar now rules over an empire unequalled in many respects by any other in the world. Not only have the Tartars, who so long compelled the Muscovites to pay tribute and acknowledge their supremacy, been shorn of all dominion in Europe, but that vast breeding ground of Asia, whence have swarmed out barbaric hordes to sweep with cyclonic force over the states of Europe, has been reduced to the sway of an European state, and is now being colonized by Slavs, who carry with them the customs and the language of the Muscovites. The Turks, kinsmen of the Mongols, find in Russia their most inveterate and persistent enemy, and little by little have been forced to withdraw from Europe.

At the base of Russia's social system it still has the democratic *mir* and patriarchal family. Though, looked at through western eyes, the government is regarded as arbitrary, cruel, corrupt and almost unmitigatedly bad, it has undertaken and completed a railroad across the Asiatic continent and taken the lead in calling a peace congress to enable European states to reduce their vast armies. Unfortunately this has not saved it from a most humiliating war with Japan, or the great war now raging. Whatever the faults of the Russian system, it must be conceded that it is adapted to vast expansion over such people as it deals with. How well it ministers to their welfare is another subject.

The most notable legislative acts since the time of Peter the Great are the ukases of 1861 and 1866 liberating the serfs, the judiciary acts of Alexander II and the establishment of the Duma in 1905 by Nicholas II. This was a first step in the transition from an autocracy to a constitutional monarchy. By the manifesto of Oct. 17, 1905 Nicholas decreed that no measure should become a law without the consent of the Imperial Duma, a freely elected national assembly. Though three successive Dumas have been elected and held their sessions, the transition period is not definitely passed. The Czar still asserts autocratic power so far as he deems it necessary.

By the ukase of Feb. 20, 1906, the Imperial Council was associated with the Duma as the upper house of the national



legislature. This Council consists of 196 members, of whom ninety-eight are appointed by the Emperor and the other ninety-eight are elective. Of the elective members three are chosen by the monks, three by the secular clergy, eighteen by the corporations of nobles, six by the academy and universities, six by chambers of commerce, six by the industrial councils, thirty-four by the governments having *zemstvos*, sixteen by those having no *zemstvos*, and six by Poland. It is apparent from the composition of the Council that imperial influences dominate in it.

The Duma is the lower House of the parliament and consists of 442 members elected by a very complicated electoral system, designed to give control to the land-holding class, while allowing the poor to vote. In the first two Dumas the radical popular elements predominated. To give the conservatives control the method of election and basis of representation were changed, so that no matter how large a popular majority the liberals may have the land-owners will still be able to name the majority of the Duma.

The Russian parliament thus constituted shares with the emperor the legislative power, except in measures dealing with the organization of the army and navy. The despotism has not yet given up the instruments through which despotism may be perpetuated. Any member may propose a law, but it must be submitted to the minister of the department affected by it, who may consider it for a month and then has the right to prepare the final draft for consideration of the House. The ministers are accountable to the emperor, not to the parliament. The Czar has the power under extraordinary circumstances when the Duma is not sitting to issue ordinances having the force of law. While these must be laid before the Duma at its next sitting, the reserved powers to proclaim a state of siege and to prorogue or dissolve the Duma leave the Emperor with absolute power whenever he sees fit to use it. Nevertheless the Duma as the representative body of the nation has a powerful and growing influence and will doubtless dominate when it has capacity to direct public affairs.

By the law of Oct. 18, 1905, a council of ministers to assist

the Emperor in the supreme administration was created with a minister president. This council consists of the ministers of (1) the Imperial Court; (2) Foreign Affairs; (3) War and Marine; (4) Finance; (5) Commerce and Industry; (6) Interior; (7) Agriculture; (8) Ways and Communication; (9) Justice; (10) Public Instruction. Aside from these there are the Comptroller and the Emperor's private Chancery. There is no joint or common responsibility of the ministers. Each is accountable to the Czar and to him alone, and may pursue such policy as the Czar authorizes without regard to the views of the heads of other departments. The Ministers however meet in Council for consultation. They are presided over by a President of the Council of Ministers, named by the Czar. Important matters arising in either bureau may be discussed in these meetings or taken to the emperor privately as he may prefer. Unity of control and direction rests in the Czar alone.

Each minister is assisted by a council which seldom meets, and also has one or two assistants who actively participate in the transaction of affairs. Most of the bureaus are divided into departments according to the nature of their duties, and have officials and clerks charged with the minor details.

The Senate, established by Peter the Great and designed by him as the chief governing body under him, though now of far less importance than the Council, has seven departments exercising administrative functions, through which the laws are promulgated, the acts of governors examined and their conflicts with *Zemstvos* adjudicated. Two departments are the courts of review and constitute the highest court of the empire, and another pronounces judgments in political causes. The Holy Synod, made up of metropolitans and bishops, rules religious affairs.

For purposes of administration the European empire is divided into fifty *guberniya* in Russia and ten in Poland. The Asiatic dominions are divided into the lieutenancy of Caucasia and the governments of Turkestan, Stepanoye, East Siberia and Amur. Each government is divided into districts, *nyezd*, under a police captain, *ispravnik*. At the head of each *guber-*

*niya* is a governor. Formerly his powers were those of a local autocrat, as representative of the Czar, but now they are greatly curtailed. He is assisted by a vice governor and a government council, which however is merely advisory. By the ukase of 1785 Catharine II confirmed on the *dvorniastvo*, the nobility of each province, the right to name the local functionaries and justices, and to supervise and control the local administration, justice, police, finances and all matters of local interest. Assemblies were held once in three years for these purposes, and they appointed the *ispravniks* and local justices. Their assemblies sat, elected boards, and appointed commissions to inspect the governor's accounts, but in fact exercised very little influence on the administration, which received its impulse from the central authority. In 1864 the *Zemstvo* or territorial assembly was established, composed of representatives of all the orders. The peasants, the towns and the nobility, each elect their representatives separately. The representation is apportioned arbitrarily, so that the peasants, who constitute more than three-fourths of the whole, have less than forty per cent of the delegates, and the million landowners have over forty-five per cent, the town people choosing the balance. The mode of election by the peasants is that the heads of families of the *mirs* choose a council for the *volost*, who choose electors to the *zemstvo*. These convene and name the delegates, *glasuyie*, who compose the *zemstvo*. The landowners have a voice in the election of their delegates according to their holdings, the small proprietors voting collectively. *Zemstvos* are not established in all the governments, there being only thirty-four at present. The powers conferred on the *dvorniastvo* was substantially all transferred to the *Zemstvo* with others added. There is also a *Zemstvo* of the district with local powers corresponding to those of the province. These relate to all matters of purely local concern. They apportion the taxes, maintain roads and schools, but are limited in their expenditures by the demands of the general government on the revenues. To much of their legislation the governor's assent is necessary, even to the repair of roads and the increase of local taxes. To other acts the

ratification of the Minister of the Interior is required, such as large loans. All resolutions of the provincial *zemstvo* must be submitted to the governor, who has a suspensive veto. He must send in his decision within eight days. If he vetoes, the *zemstvo* must again consider it, and if again passed it is final, except that the governor may still refer it to the minister. The controversy is then decided by the Senate. Sessions are held annually. For the execution of its will the *zemstvo* is dependent on the governor, over whom it has no control. The demand for schools and the exhibition of a willingness to pay for them evidence the value of the influence of the governed in their own behalf, the *mujiks* showing the most interest and liberality of any class in that direction. The worst difficulty met in building up the educational system is the interference of the inspectors, who are jealous of the effects of education. A remarkable piece of local legislation, quite in keeping with the ancient system of land tenures, is compulsory mutual insurance of the property of the peasants against fire. Among the institutions introduced by the *zemstvos* were savings banks, local postal facilities, construction of highways and railroads, draining of marshes and planting trees on the steppes. The main characteristic of the work thus far performed by them is that it is for the general good of the people. To check the freedom of expression in the *zemstvos*, by a subsequent edict it was provided that the chairman should be nominated by the minister, and that he might interrupt any speech or stop the consideration of any motion or resolution, which in his opinion was inimical to the government. The different *zemstvos* were also prohibited from communicating with each other.

At the head of the Judicial System of the empire stands the Senate. In reviewing the proceedings of inferior tribunals it limits its consideration to questions of law and affirms or reverses the decision of the lower court, and in case further proceedings are required remands the cause to it. It exercises original jurisdiction in the trial of accused members of the administration, and is the auditor of accounts. It is a department of heraldry and the supreme court for the trial

of political causes and offenses against the State. It has jurisdiction over differences between members of the administration, as well as between the governors and the *zemstvos*. The department of supreme appeal is divided into two sections, one for civil and the other for criminal matters, which have jurisdiction of causes appealed from all parts of the empire. The judges of these departments, as well as of the district courts, are appointed by the Czar. There is a nominal right of presentation by the remaining members of these courts of candidates to fill vacancies, but their choice must be sanctioned by a procureur-general, who represents the state as one of the officers of each court. This right of presentation does not extend to the presidents or vice-presidents of the court, but only to the other judges, and the candidates proposed may be accepted or not.

In order to give the judges an appearance of independence, their tenure is for life, unless convicted of some offense, but while they may not be arbitrarily removed from office, they may be transferred to a distant province and thus in effect condemned to exile. Procureurs are appointed by the ministry and removable at pleasure.

Substantially contemporaneous with the emancipation of the serfs came a reformation of the judicial system. At the base of it are two sets of courts. For the peasants there are *volost* courts, elected by and having jurisdiction over peasants only in the *volost*, which may include one large or several small *mir*s. The *mir*s name eight candidates from among the peasantry, from whom the chief of the *volost* selects four to sit. To be eligible a man must be thirty-five and able to read and write, where such selections are practicable. The presiding judge of the court is selected by the assembly of elders of the *volost*. The court sits at least once a fortnight, usually on Sundays and holidays. It has jurisdiction in civil causes involving one hundred roubles or less, and in petty misdemeanors where the maximum punishment is a fine of thirty roubles, seven days' imprisonment or six days' work or twenty strokes with the rod. Their decisions are not required to be in accordance with general law, but are governed by the

local customs. The rod however may only be used on the strong who are able to bear it. Of petty matters their jurisdiction is extensive, covering those concerning communal rights, inheritances and other matters growing out of the peculiar organization of rural communities. Appeals are allowed to the assembly of cantonal rural chiefs in civil cases, where imprisonment or corporal punishment is imposed. By the reforms of Alexander II justices of the peace elected by the district *zemstvos* had jurisdiction over all minor civil cases involving five hundred roubles or less and criminal cases punishable by one year's imprisonment or three hundred roubles fine, but by the ukase of 1889 these, except in the great cities, were abolished and in lieu of them the office of rural chief was created for each *volost* with substantially the same jurisdiction, and also various administrative duties. These chiefs must be landowners, belong to the local nobility, and are paid a salary by the state. They are nominated by the governor of the province on consultation with the marshal of the nobility of the district and confirmed by the Minister of the Interior. The chief has supervision of the financial and police affairs of the commune and nominates the members of the peasants' *volost* court. From the decisions of the chief an appeal lies to the district assembly of canton chiefs. They receive in rural districts 2,200 roubles per year. The district courts, which are given general original jurisdiction in both civil and criminal causes, have three judges and a jury. The judicial reforms of Alexander II, which unfortunately have not been steadily carried into effect, contemplated the complete separation of judicial from administrative powers and public trials on the oaths of witnesses with the aid of advocates, following the most advanced models of western nations.

Of these district tribunals there were in European Russia about sixty, and over them nine appellate courts located at St. Petersburg, Moscow, Kazan, Saratof, Kharakof, Odessa, Kief, Smolensk, and Vilna. In trials by jury the court answers to the law and the jury only as to the facts. The unexpected acquittal of Vera Zassulich for the murder of General Trepof resulted in subsequent denial of jury trial in simi-

lar cases, which were transferred to a department of the senate or heard before a military court. Reforms in the judicial system from the time of Catharine II to the present have been introduced modified and abandoned, and with the theory of a complete centering of executive, legislative and judicial power in the Czar still fully recognized, all innovations are to be looked on as tentative. Until the judiciary becomes independent of the will of the Czar, no permanent separation of powers can be assured. The ministry are still afraid of an independent judiciary, and the system of appointments is calculated to insure a degree of subserviency in the courts. The vast empire is ruled in fact by the ministers and their agents.

In the actual administration of the government the police department plays a most important part. There are two classes of police officers, one the regular under the Minister of the Interior, the other political, directly under the Czar himself. In the districts into which the provinces or governments are divided the chief officer is the *ispravnik*, a police officer. From the time of Catharine II till the emancipation these officers were elected by the nobility, but are now appointed by the governors. A great multiplicity of duties devolve on the police officers. Through them all administrative orders must be executed, conspiracies must be detected, conspirators arrested and prosecuted. They are health officers, censors, prosecutors in the lower courts, overseers of recruits and soldiers of the reserve and supervisors of passports. In the small towns and country there is no protection against the arbitrary exercise of their authority. It was through the famed Third Section of the Chancellery, the state police, that the arbitrary autocratic powers of government were mainly exerted. Though this has been in form abolished, its substance is still preserved, and police agents enter dwellings, as well as all other places, at any time of day or night without process, and make searches, seizures and arrests at will. The governors of provinces close at will any industrial establishment, forbid an individual to reside in a city, and take political suspects away from the regular courts. The government

may at any time place any province or district under a "state of extraordinary protection" under the most arbitrary military rule. By administrative decree the publication of any periodical or other publication may be suspended or prohibited, and an educational establishment may be closed. In every city of any importance there is a colonel or captain of police to whom no place may be closed and from whom nothing may be concealed. His business is to keep all under surveillance, officials as well as citizens. To aid him he has secret agents scattered everywhere. Every indiscreet remark is reported, often with direful consequences.

The main purpose of the Czar in maintaining his secret police was to have a system through which he could keep informed of the doings, not merely of his subjects in general, but of the officials of the empire as well. Of all the difficulties under which an autocrat ruling a vast empire labors, none is greater or of more moment than that of gaining reliable information concerning the multiplicity of affairs which he is called on to direct. A secret police, composed exclusively of trustworthy and upright men, would be of incalculable value to him, but made up of corrupt and unreliable ones it becomes a means for perverting the best of intentions on the part of the ruler.

The constitution of Russian society, while now undergoing some changes, is still essentially the same as for several hundred years. More than eighty per cent of the total population are classed as peasants and live mainly in their rural villages, *mirs*. The *mir* is, and has been from a date long anterior to the establishment of the empire, a democratic self-governing community. It holds its lands in common and pays its dues to the government as a unit. The affairs of the *mir* are managed by an assembly including the heads of all the families. The tillable lands are divided and apportioned to each working unit. Women charged with the support of a family are entitled to take part in the assembly. Between the members of the community there is equality of right in the village property, but the culture is not in common. Pasture lands, and in some cases meadow and timber lands, are used in com-



mon, the hay of the meadows and trees of the forest being divided for use. The custom of building their dwellings in village form has long been maintained, and communities which have settled in the United States have brought this custom with them. In the settlement of the affairs of the *mir* unanimous agreement is required. All are required to attend meetings of the *mir*. The majority may not enforce its will on the minority. The assembly of the *mir* may be convoked by the call of any one. The chief officer is the *Starosta*, who is paid by the *mir* and is charged with the preservation of order in the community. He supervises the roads, manages the communal funds, the schools and hospitals if any, and any other public institutions of the *mir*. He looks after the collection of the taxes and deals with the government officials in payment of public dues and other matters. He is a general police officer and arrests persons charged with offenses. He is the general business representative of the *mir*, but in all things he is its servant, not its master, and must carry out its orders.

A collection of *mir*s, varying to include from six hundred to four thousand persons who were formerly charged with poll tax, is called a *volost*. At the head of this is a *starschina*, elected by representatives of the *mir*s, who holds for a term of three years. He is assisted by a board, *volostnoye pravl-mye*, made up of all the *starostas* of the *mir*s or their assistants or special representatives chosen by the *mir*s. Important matters are decided by this board and minor ones only by the *starosta*. Aside from these officials the *mir*s and board employ such agents as their affairs require and pay them for their services. An important personage in the *mir* is the clerk, who keeps its records, and though without any recognized authority, by reason of superior education often wields great influence. The scarcity of persons able to write frequently makes it necessary to bring a clerk from without.

The *volost* assembly elects the judges, appoints representatives to district assemblies, and provides for roads, schools, hospitals and public works which a single *mir* cannot undertake. The assembly of the *mir* has power to discipline its

members, even to expel them, and to admit new ones. Meetings are usually held in the open air and are without any set form of procedure. Sunday after mass is a favorite time of meeting. While unanimous agreement is necessary to a decision in the *mir*, a majority may decide in the *volost* assembly.

Similar in principle to the peasants' commune is the *artel*, a name given to an association of workmen engaged in the same trade and working in concert. A head man is elected by the members, who represents the *artel* in its dealings with employers and the outside world. The wages earned by all are equally divided among the members. The *artels* are usually small, seldom exceeding twenty in number, and they expel and admit members at will.

All nobility in Russia starts from official station. Two sorts are recognized, hereditary and personal. The hereditary from the time of Peter are the officers of the army having the grade of ensign or higher and civilians of equal grade and their descendants. Inferior public servants belong to the personal nobility and are merely free citizens. The number is necessarily very great, about six hundred thousand hereditary and three hundred and fifty thousand personal. The feudal system never obtained in Russia, and it has no nobility of the kind developed in western Europe having hereditary political power. There are fourteen grades of rank. From the time of Peter special dignities have been conferred by special diploma making about one hundred counts, some fifteen princes and sundry barons. Titles are inherited equally by all the children. There is no primogeniture. Till the time of Alexander II the nobility enjoyed, in common with the merchants and clergy, the privileges of exemption from military conscription, payment of poll taxes and corporal punishment. Of these the first has been taken away, and the others have ceased to be distinctions through the abolition of the poll tax and flogging.

Prior to the emancipation act of February 19, 1861, the title to the lands of the empire was mainly in the nobility and the crown. There was assigned to each village a tract for the cultivation and use of its inhabitants, but they were bound to

work such portion of their time as the landlord exacted,—usually one half—on his estate without pay. The allowance of land to the peasant to cultivate for his own use was in effect but affording him the means to live. All the benefit of his strength, in excess of that necessarily expended for his maintenance and the support of his family, went to the landlord. The emancipation act of 1861, which applied only to the serfs of the nobility, was designed to allow them as their own the lands which had been assigned to them for their individual support theretofore, but it is said that through defects in the practical execution of it their holdings were in fact reduced, and thus, so far as land is concerned, they were rather impoverished. The act of 1866 emancipating the peasants on the crown estates was much more liberal and gave them twice as much as they had been allowed before.

In Russia the usurer is an important factor, and the wide fluctuations in crop returns render the peasants peculiarly at his mercy. To pay taxes, if not merely to sustain life, they must frequently borrow, and to borrow is to invite ruin. Security for small loans is frequently taken in the form of labor contracts to the neighboring landlord, from which the laborer finds it difficult to extricate himself. The liberation of the personal servants of the landlords at the time of the emancipation and the loss of their lands by misfortune or improvidence by peasants have produced a considerable class of landless farm laborers, which seems to be steadily increasing. The peasant proprietors hold about twenty-seven per cent of the lands of the empire, though the peasants number more than three-fourths of the whole population and pay the great bulk of the taxes. The remainder is held by the landlords and the crown, and is cultivated largely by peasants under what are termed bondage contracts, contracts of service for advances made. But twenty-one per cent of the whole area of European Russia is cultivated. Serfdom did not extend over all Russia. Siberia, the country about the White Sea and the Cossacks of the south rejected it. The Tartars of the east, the Roumanians, the German colonists and the Finns, as a rule maintained their liberties. By the emancipation the serfs were not re-

lieved entirely of the burdens of their landlords. The peasants, in lieu of their former services to the landlords, were bound to pay an annual tribute, varying in amount in different places according to circumstances. By a subsequent arrangement the state undertook to aid the peasants to redeem and discharge the perpetual rents for a lump sum, loaned to them by the state, thus releasing the peasants from all obligation to the landlords and transferring the obligation to the state.

The village system since the redemption is still maintained as before, and the lands still belong to the *mir* as a unit. Cities in Russia are of far less importance than in any other equally great country. The people are divided into two main classes, the merchants, who have a certain amount of capital and pay license dues in return for privileges accorded them, and the mechanics and others of the humbler sort. The merchants are divided into three guilds; the first pay five hundred roubles a year and have the privilege of trading throughout the empire and abroad; members of the second are limited to home trade, and the third are the small traders. Each guild has its board and elects its head. Prior to the emancipation merchants were prohibited from owning inhabited lands, *i.e.* estates with serfs. This restricted their holdings to city property. The restriction is now removed.

A peculiarity of Russian society is the scarcity of professional men. The medical profession languished mainly from want of schools. The legal profession had no standing, procedure in the courts being secret and conducted by officers of the government. The reforms of Alexander II make the courts open to all classes equally, require trials to be public and allow parties to be heard in person and by attorney. This has given life to the profession of the lawyer. At so low an ebb was legal training, that it is said that a considerable number of the judges of the courts of general jurisdiction had no previous training in the law. The leading peculiarities of Russian society are its division into two main classes, the peasants and the office-holding and land-owning nobility, and the meagre numbers and small importance of what in some

other countries make up what is termed the middle class, but which in fact is morally and intellectually the highest. Russia is also peculiar in that the number of its landless and dependent class is smaller than in any other great country.

The educational system is yet in its infancy and illiteracy is the rule all over Russia. This is not due to any disinclination to learn or want of capacity in the children. No where are more apt students to be found. At the great cities there are universities, which in many respects rank well with the best schools of Europe, but are afflicted with excessive governmental supervision. They are revolutionary hot beds, and rigid police supervision of the students is regarded as indispensable. The natural spirit of the students induces them to revolt against this interference, and riots are not infrequent. The government has the impossible task of giving a liberal education to the youths and still retaining respect for despotism. Scattered through the provinces are high schools, at which instruction in the dead languages is given along with other branches. Primary schools are yet more numerous, but hardly one-tenth of the children are as yet afforded even the rudiments of education. Only about one-ninetieth of the revenues raised from the people is applied to schools. The army, navy and public officials absorb the lion's share. To the means furnished the schools by the government must be added about as much more raised by the *zemstvos*, besides that paid for private instruction. The people everywhere show great interest in obtaining the benefit of schools, and the peasants especially exhibit much liberality in taxing themselves to establish them.

Railroads and telegraphs are mainly in the hands of the government, and a system of banks is also maintained. Manufacturing industries are still in a very backward state.

In religion most of the Russians adhere to the Greek Church. The clergy, who are dependent on the Czar for their positions, have for centuries been the mainstay of his authority. Over an illiterate and devout people they exercise a most powerful influence, and the duty of submission to the Czar's authority is constantly inculcated by every priest in the land. Perhaps

no other people in the world are so thoroughly loyal to their chief ruler as they, and this is largely due to the influence of the clergy.

In its governmental system Russia seeks to administer the affairs of its vast empire from a single head. Its territory is not divided into either tributary or self-governing dependencies, but is a compact and largely homogeneous state. The central power connects itself directly with each part down to the peasant village. It allows and in fact derives great advantage from the democratic *mirs*, which in effect reduce the number of units with which it has to deal from that of the individuals to that of the *mirs* or *volosts*. Local self-government over limited areas aids autocracy. The force of the *volost*, made up of unlettered peasants, is insufficient to endanger or interfere with the central authority. The recently established *zemstvos*, if permitted to consult and combine with one another, might check arbitrary power, but such combinations are jealously prohibited, and the *zemstvo* is not sustained or invigorated by that inherited strength, which the primitive village has brought down from antiquity. Its powers are more strictly limited and its functions not generally comprehended.

The system of laws which prevails exhibits peculiarities due to the manner of its development. Although it cannot be said that all its laws are an indigenous growth, and that none have been borrowed from other nations, the system is distinctly Russian. It is in main a product of local customs, peculiar to Russia, which furnish the laws of the peasant communities, and of edicts of the Czars. There never has been an adoption of the legal system of any other state or people. From time to time the Czar has issued his ukase, covering any subject he had in mind in his own way, without regard to anything which his predecessors had done. Russian Czars have frequently been bold innovators. As a reformer the Czar has ideal conditions for action. He makes the law as he wills. The emperors have for many generations realized the necessity of governing in accordance with declared principles, but they have been unwilling to part with their judicial

power, or speaking more accurately, with the power to set aside and disregard their own rules wherever deemed expedient. The laws therefore have been only for the guidance of subordinates, and then only so far as seemed consistent with the policy of the bureaucracy. There have been various compilations of the laws of the empire, beginning with that of Iaroslav in the tenth century and ending with that of Speransky in the reign of Nicholas I. This last compilation fills forty-five quarto volumes, containing the laws of the empire arranged in chronological order. These laws have been condensed into a code, *Svod*, classified by subjects, and included in fifteen volumes, containing over sixty thousand articles in fifteen hundred chapters. This vast mass of legislation would seem to be sufficient to afford fixed rules for most cases, but as a matter of fact there is much contradiction and inconsistency in the ukases of the various Czars, issued at different times and acting under varying impulses. To the subject these laws have afforded no safe rule of conduct or protection of property rights, because of the system of administration. Trials in the courts of both civil and criminal causes until 1864 were secret, the evidence being taken down in writing. A system of appeals from one court to another has long prevailed, but this adds little to the suitor's security and causes much delay and expense. Lawyers were not advocates but merely intercessors with the judges. That best of all guarantees for the integrity of judges, trials in the presence of the public and of the professional lawyers, whose business it is to extract the truth from parties and witnesses and apply the law to the facts, was not given till the reforms of Alexander II. While long steps in the right direction have been made in the reformation of the judiciary, there is still much to be desired in the way of independence and fearlessness on the bench. This may be said with truth of every other land, as well as Russia. There it is the Ministers whose influence is regarded as most baneful, elsewhere it is mainly the rich and powerful. The principal complaints urged against the Russian system are for arbitrary arrests and punishments; lack of security for the citizen against the malice of police officers; cruelty and bru-

tality in the manner of executing sentences; insecurity in the home against searches, seizures and arrests, and police interference with the private life of the citizen. To this is added a charge of general and all pervading corruption among public officials, courts, police officers, governors and even ministers. Just how far this sweeping charge is justified by the facts it is impossible to state, but the want of that effective check, accountability to the people for whom and on whom authority is exercised, renders it probably true that the charge is well sustained. The Czar and the ministers seek to keep informed of all that is doing through the secret police and spies, but of the integrity of these they have no better guaranty than of the officials they are sent to watch. The fundamental difficulty, which no autocratic government has ever permanently overcome, is that the number of matters to be investigated is too great and the scene of action is too far away for any set of men at the capital to be able to learn the facts and act intelligently on them. To conduct the affairs of so vast an empire safely and intelligently much must be referred to the people of each district, who alone can be relied on to bring to account their local oppressors or incompetent public servants. With every step forward in civilization an accession of mental and moral force in the governing head is required, which no one man or small clique of men can possibly furnish. The knowledge, virtue and power of the great multitude must be drawn from in order to move forward safely and rapidly. The purest and best part of the administration of Russian affairs will generally be found to be that under the immediate supervision of the Czar himself and that directly managed by the people in their local concerns.

On March 15, 1917, the Czar abdicated and the Romanof dynasty, under which the boundaries of the empire had been extended over all eastern Europe and northern Asia, came to an end after three centuries of power. As the war progressed and the fundamental issue between the parties became more clearly defined the incongruity in the alliance of autocratic Russia with democratic France, Great Britain and Italy, for



the overthrow of militarism in Germany became more and more apparent. The Russian autocracy was in theory a more absolute military despotism than that of the Kaiser. The war demonstrated its lack of efficiency. The ideals of the ministry and their subalterns were essentially the same as those of the military nobility of Prussia. But at the base of the governmental system were the democratic *mirs*, the *artels* and other associations of the proletariat, filled with longings for liberty in an unalloyed democracy. A little progress had been made in the construction of a representative government through the *zemstvos* and the Duma, but the vast illiterate multitude knew almost nothing concerning the principles of organization which are essential to the security, welfare and efficiency of a great democratic nation. The number of educated people of moderate means was relatively much less than in the western nations. The proletariat were distrustful of the bourgeoisie as well as of the ruling classes. The war stimulated the activities and increased the importance of the *zemstvos*, through which a large part of the supplies of food, clothing and munitions were furnished the soldiers. The inefficiency of the ministry became more and more apparent as the strain of the struggle increased. The Germans had been seeking a separate peace with Russia, and Boris Stürmer, who was both Premier and Minister of Foreign Affairs, was charged with German affiliations. The hostility of the Duma caused him to resign on November 24th, 1916, and Mr. Alexander Trepoff was appointed as his successor. On December 15th the Duma unanimously voted to entertain no peace proposals. The Czarina was of German birth and regarded as strongly pro-German in her sympathies. She fell under the influence of the monkish impostor, Rasputin, to whose supernatural aid she attributed the improved health of her son. The murder of Rasputin on January 29, 1917, was followed by the dismissal of Trepoff and the other liberal ministers, who showed no disposition to punish the slayers of Rasputin, and the appointment of Prince Golitzin, a reactionary, opposed to all the reforms demanded by the liberals, as Premier, and a cabinet in accord with him. The Duma continued to manifest a disposition to exercise

legislative functions, and in March the Czar ordered it dissolved. The Duma refused to be dissolved, procured the abdication of the Czar, took charge of the government and named a council of ministers to conduct it. The people both in and out of the army were ready for the revolution, and there was surprisingly little resistance to the Provisional Government. The workingmen's organizations and most of the soldiers supported the Duma, and the complete overthrow of the autocracy was accomplished with very little bloodshed. The Provisional Government was recognized by the United States on March 22 and by Great Britain, France and Italy on March 23.

But while there was such an overwhelming majority of the people in favor of the overthrow of the old government, there was no such majority in favor of the new. The Council of Workmen's and Soldiers' Delegates, though not representative of the whole nation, was the most potent organization existing among the multitude. It at first gave its support to the new Ministry, but the ideals of the great multitude were opposed to a ruling force, and soldiers and workmen sought an immediate realization of their hopes and purposes through excessive wages and a division of the land. In the first days of the revolution a considerable number of army officers were killed by the men under them, and discipline was destroyed. The leaders labored earnestly to construct a Cabinet that would command the confidence of all classes and made frequent changes with that end in view. Alexander F. Kerensky, a socialist who believed in law and order and the vigorous prosecution of the war, came rapidly to the front and appeared to have the confidence of all classes. In the last days of July he succeeded Premier Lvoff, and a new government was formed with a Cabinet of ten Ministers, five of whom were socialists. Kerensky retained the portfolios of War and Marine. The Council of Soldiers', Workmen's and Peasants' Delegates of all Russia passed by a large majority resolutions supporting this Provisional Government and according it unlimited powers for reestablishing the organization and discipline of the Army and issued a vigorous proclamation urging

all to support it. Confidence in the new government was short-lived. Discipline and efficiency could not be at once restored to an army poorly supplied with food, munitions and equipment. The Germans took Riga and overran Oesel Island. The Bolsheviki, extreme socialists, under the leadership of Nikolai Lenin and Leon Trotzky took advantage of the depression resulting from the defeat of the army to propagate their doctrines and press their demands for an immediate peace.

On November 7, 1917, the Bolsheviki, backed by the garrison of Petrograd, overthrew the Provisional Government. The Military Revolutionary Committee of the Petrograd Council of Workmen's and Soldiers' Delegates announced as their program;

- "1. The offer of an immediate democratic peace.
- "2. The immediate handing over of large proprietary lands to the peasants.
- "3. The transmission of all authority to the Council of Soldiers' and Workmen's Delegates.
- "4. The honest convocation of a Constituent Assembly."

The German government promptly took advantage of this announcement and proposed peace negotiations. Hostilities were suspended on December 7, and an armistice announced on December 16, between the Central Powers and Russia.

Disintegration of the great Russian Empire set in and progressed rapidly. Finland, which had always been restless under the Russian yoke, asserted its independence, and the Ukranian People's Republic concluded a separate peace on February 9, 1918. The Bolshevik Government, dissatisfied with the terms imposed by the Central Powers, announced its refusal to sign the treaty and its withdrawal from the war. By the same document the demobilization of the Russian troops on all fronts was ordered. But the Germans would not accept this declaration as an end of the war. Their armies continued to advance and the Bolsheviki yielded and signed the treaty which in effect transfers Poland, Courland, Esthonia and Lithuania to Germany and recognizes the Ukraine as a separate nation. Since the conclusion of this treaty there have been

several attempts at counter revolution and the establishment of local governments differently constituted. No organization is recognized as having authority over all or nearly all the territory formerly included in the Russian Empire. Under the leadership of Lenin and Trotzky the Soviet Government has been established and with the support of the Red Army has maintained rulership over most of Russia. A police and spy system similar in its workings to the old system of the Czars has been established and has been quite as ruthless in its methods as the old one. It has been used for the circulation of propaganda designed to create sentiment in favor of the Soviet system. The struggle for mastery between the leaders of counter revolutions and the Soviet leaders has ceased for a time, if not permanently, with the Soviet organization still in control. Fear of a return to the autocracy and jealousy of foreign interference have been skilfully turned to their advantage by the Soviet leaders. The stratification of society has also been favorable to the dominance of their form of organization. The Czar and his family were ruthlessly murdered on July 17, 1918, at the Ural town of Ekaterinburg, to which they had been removed, and most of those who constituted the ruling class under him were either killed or driven out of the country soon after the overthrow of the Provisional Government. The bourgeoisie, who in more advanced nations constitute the ruling force, were too few in numbers and wanting in organization to be able to materially influence political affairs. The peasants, though greatly outnumbering all other social elements, were too ignorant and wanting in capacity for organization to assume mastery of the nation. The organizations of the laboring men in the great cities and of the soldiers were far more numerous and complete than those of any other social elements. Lenin and his co-workers made skillful use of them and established their leadership. They have undertaken to work out a complete socialistic organization of the state. They have been quite as bitterly opposed to all capitalistic domination as to the political rulership of the Czar. They have sought to put an end to all capitalism, all exploitation of labor either through money, credit, ownership of land, fac-

tories, railroads or other means of production or distribution of wealth. Their method has been the simple and direct one of governmental seizure of all forms of property. The results have been temporary advantage to those who have done the seizing, followed by paralysis of the industries resulting from lack of competent management and the supplies that are essential in all industrial operations. Seizure of the crops of the peasants for the use of the Soviets and their army has discouraged the production of food. In a vain attempt to supply the place of the products resulting from useful activities the government has resorted to the familiar expedient of paper money, issued in unlimited quantities, with the inevitable result that it is now almost worthless. The denial of all advantage to capital and capitalists destroys the credit system. The theory that the laborer is entitled to the whole product of his labor has a charm that appeals to the mere wage earner. He often fails to fairly comprehend the necessity for saving and applying a part of the proceeds of the business to the construction and repairing of buildings and machinery, the purchase of raw materials, fuel and supplies, or of establishing credit to tide over adverse business conditions or unexpected losses. Until educated to a full comprehension of these needs the laborer's desire for his full share of the gross product of the industry dominates. The distrust of capitalistic owners, who have heretofore not merely accumulated the needed funds for the transaction of their business, but have lived in comparative luxury, has caused deep seated antagonism to them and their system. The money lender, who lives on usury and without work, appears yet more objectionable. All who lend surplus means are rated as usurers, even though they in fact do more than their share of useful work. Actuated by such considerations, the leaders have attempted the complete nationalization of all industries and property. Reliable data are not yet available for a detailed statement of the steps taken to this end or of their effects, but there can be no doubt that many of the manufacturing plants have gone to decay and wholly or partially ceased to give employment to the workers. Peasants whose lands and crops have been seized have curtailed

the production of crops, and want and famine have followed. Instead of being the granary from which industrial Europe is fed, Russia is short of food for its own people. The prevailing famine is due in large part to the great drouth of 1921, but with normal planting and cultivation and normal facilities for transportation and distribution the want and suffering could have been greatly reduced. With railroad tracks, engines and cars out of repair and no funds available to restore them it is impossible to move supplies from distant places of production to the famine stricken districts. With the repudiation of the national debt national credit is destroyed, and with the abolition of private property the basis of private credit is taken away. Without security or interest there is no inducement for those who have money, food or clothing to furnish it to a borrower or a purchaser. Present inability to pay cannot claim the aid of credit till a return of prosperity, unless the borrower recognizes his obligation to pay and is given a chance to accumulate the means to do so. The farmer or craftsman cannot provide for the future needs of himself and others, when the government seizes his product for the use of those exercising authority and the army that maintains them in power. The socialism of the Soviets has been followed by results in marked contrast to that of the Incas of Peru, which caused the accumulation of such ample supplies of all necessities. The fallacy of the present Russian system is that instead of being designed to increase the sum total of useful things for distribution among the people, it diminishes production by taking away the incentives to private effort, destroys credit and confidence and discourages private initiative.

To repair the waste of war and the wrecked industries of the country the leaders are now seeking to restore foreign trade and to procure foreign loans. Of the leading nations Germany is the only one that has fully recognized the Soviet Government. Great Britain has given it a partial recognition by a trade agreement signed in London on March 16, 1921. The parties to this treaty are the Government of the United Kingdom and the "Russian Socialist Federal Soviet Republic, hereinafter referred to as the Russian Soviet Government."

Article XI contains the following recognition of property rights:

"XI.—Merchandise, the produce or manufacture of one country imported into the other in pursuance of this agreement, shall not be subjected therein to compulsory requisition on the part of the Government or of any local authority."

Perhaps the most important part of the whole treaty is that contained in the part appended after the signatures to the body of it, reading as follows:

"At the moment of signature of the preceding Trade Agreement both parties declare that all claims of either party or of its nationals against the other party in respect of property or rights or in respect of obligations incurred by the existing or former Governments of either country shall be equitably dealt with in the formal general Peace Treaty referred to in the preamble.

In the mean time, and without prejudice to the generality of the above stipulation, the Russian Soviet Government declares that it recognizes in principle that it is liable to pay compensation to private persons who have supplied goods or services to Russia for which they have not been paid. The detailed mode of discharging this liability shall be regulated by the Treaty referred to in the preamble."<sup>1</sup>

These provisions are very guarded recognitions of rights to private property and obligations to pay debts.

At the Genoa Conference the Soviet Government was again confronted with the inconsistency of its position in refusing to recognize the validity of prior debts and obligations when asking a loan of money from creditors holding past obligations which it repudiated.

#### *Authorities*

Rambaud: History of Russia.

Beaulieu: The empire of the Tzars.

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Encyclopaedia Britannica.

<sup>1</sup>Current History XIV No. 2. 257.

## CHAPTER XVII

### ITALY<sup>1</sup>

Were it not for the fact that the city of Rome is included within its boundaries and is now its capital, there would appear little connection between modern Italy and ancient Rome. The boundaries of the present kingdom, though clearly marked by nature, were never of importance to Rome. Her policy and system both under the republic and empire applied equally to more distant lands. As a political unit Italy has no history till within the last half century. After the fall of the western empire came the Goths and established a kingdom over the peninsula, nominally under commission from the eastern Emperor, but really with little recognition of his authority. Then followed the effort of Justinian to reestablish the Byzantine rule and the appointment of an exarch at Ravenna to rule as his representative. Then came the invasion of the Lombards, also a German race. They came not merely as an invading army but as a moving nation with wives, children and all their chattels, occupied the valley of the Po and moved slowly down along the interior of the peninsula, leaving Venice, Ravenna, Rome and other portions untouched. From their advent till modern times the sovereignty over Italy was divided. The temporal power of the popes, like that of feudal lords in later times, had for its foundation a recognized ownership of land. By various means the Roman pontiff acquired large possessions in and about Rome, over which he assumed civil authority. Under Gregory I (590 to 604) these possessions were largely increased. In 754 the Frankish king Pepin, having taken up the quarrel of the Pope with the Lombards and defeated them, handed over to Pope Stephen III a con-

<sup>1</sup> For Mediaeval events in see ch. XV. For a full account of the legislation of the Goths, Burgundians, Lombards and Franks see Calisse's *History of Italian Law*, Continental Legal History Series, Vol. 1.



siderable district including Ravenna and Pentapolis, "to be held and enjoyed by the pontiffs of the Apostolic See forever." This was followed in 800 by the alliance of Pope Leo III with Charlemagne, by which the latter received the imperial crown from the former and in return recognized the spiritual supremacy of the Pope throughout Christendom. The southern portion of the peninsula did not submit to Charlemagne, but recognized the ultimate sovereignty of the emperor at Constantinople. After the Frankish empire fell into decay there followed a period of discord and lack of central authority, though there was a titular king of Italy, who waged war on the local nobility to enforce his authority with varying success. In 961 the German emperor Otto entered Lombardy and in the next year was crowned emperor by the Pope at Rome. The dominion of Otto and succeeding German emperors was never fully recognized throughout Italy, and wars frequently occurred in efforts to enforce their authority. Then came the war of the investitures, which was a struggle for actual power between the Pope and the Emperor. Following this conflict, though it may not be safe to say as a result of it, came the age of free cities. The feudal system was introduced into Italy and was enforced in rural communities, but the towns adopted popular systems and asserted their independence. The history of these petty states affords a most valuable lesson in the subject of our study. Their development was along similar lines with substantially similar results. At first a comparatively few people joined together for mutual aid and protection. The system of municipal government at first adopted was popular in character and design to protect the more humble citizens against aggression. The tyrant most dreaded was usually a feudal lord, against whom the burghers united. Joining for defense against the exactions of rapacious nobles, they were disposed to accord justice to each other. This necessarily implies consideration for the rights of the humble. With superior moral principles as the basis of their institutions they naturally drew strength and gained numbers from among those who could escape from the dominions of oppressive nobles. With freedom of action accorded to each

citizen and protection to all these little republics exhibited a degree of activity and force far exceeding that to be found among people ruled by petty despots, and the development of industries and trade went forward at a remarkable pace. Though the free cities succeeded in combining against common enemies at times, they soon manifested jealousies and hostility toward each other. Like the ancient Greeks they lacked capacity for combining for common ends, and went to war instead. In their several internal organizations democratic systems were gradually converted into oligarchical ones and these generally, perhaps universally, divided into warring factions, which were only subdued by a despot, usually from without the particular city. Thus it will be observed that these republics began with relatively good principles and exceptional prosperity and ended in disaster and tyranny. The question naturally forces itself on us, if the early system is the better, why is it invariably followed by that which is worse? Why does the good perish and the bad take its place? The answer must be that the early system contained the germs of its own destruction, and that these germs grew and gained strength at the expense and ultimately to the exclusion of the salutary principles which were dominant in the early organization.

Everywhere it will be found that the power of a ruling oligarchy has developed in connection with the theory of the transmission of property by inheritance. Probably the reason why the effects of laws of inheritance in developing a distinct class are not readily perceived is, that estates pass from father to son, one at a time, so that there is no time when there is a noticeable change in the personnel of the oligarchy. Where all start poor and on a substantially equal footing, difference in capacity, strength, prudence and other circumstances, results in the accumulation by some of more property than the rest. Perhaps no social or political distinction results from this difference. The feeling of fellowship between the richest and poorest may continue through life. But at the death of the wealthy one the estate passes by inheritance to a son who has done nothing to merit it. He takes it with a feeling of

pride and superiority over the sons of the poor. If possessed of the requisite qualities the inheritance he has received adds to his power to acquire wealth, and he increases his holdings. His riches give him distinction and naturally mark him as a public man. He is placed in authority more or less of the time. At his death an increased estate passes to his heir. By this time the bond of sympathy between rich and poor is broken. The son, whose ancestors for two or more generations have enjoyed wealth and exercised power, believes himself to be of a superior class. He associates only with those of similar fortune and looks with contempt on the poor. Starting with an utterly false estimate of his own deserts, he regards the possession of property through a law which is merely a human regulation, as due to the special grace of a higher power and himself marked out as superior to the multitude. Discarding utterly the doctrine that individual merit and desert rest solely on individual conduct and effort, he makes a virtue of idleness and takes the fruits of the labors of others without suspecting that justice would deny him any share of that for which he returns nothing in exchange. Naturally the heirs of wealth associate mainly with those of their class, and by intermarriages wealth is consolidated and the interests of families are combined. The history of all the Italian cities shows that through exactly this process an oligarchy was established, based on possessions. Then came jealousies, rivalries and factions. While the poor may at times raise riots when bread is scarce, the idle rich spend their time in plotting to gain still greater prominence and ascendancy. Having plenty they covet still more and incite the poor, who are dependent on them, to fight in their interests. The landed aristocrats of Italy, like those of other parts of Europe in feudal times, based their rights on grants from the king or emperor. His right to make such grants generally had its foundation in military power and conquest. The shifting fortunes of the rulers of different states placed it in the power of some one of them at some time to regard each tract of land as conquered territory to be given to his favorite followers, and as to many parts there were many changes of sovereignty.

Though the soil of Italy became a bone of contention among foreign and domestic princes and for 1400 years was without national unity, its people still held a commanding position in many respects. The church passed from being an organization to propagate religious faith and moral principles to one whose main aim was power and mastery. The weapons of the church were not merely interdicts and excommunications, but the Popes did not hesitate to equip armies and fight bloody battles. Through the theory of land titles the churches and monastic societies became possessed of a large proportion of all the best lands in Europe. To the revenue derived from these was added a great variety of contributions from all classes of people for supposed services, in the collection of which the priesthood became very expert. Schemes to gather money were never wanting, and the sale of indulgences and the confiscations of the Inquisition show to what depths of iniquity the professed heads of the Christian religion could descend. Most of the people of Italy have been poor, ignorant and sorely oppressed during most of the time since the fall of the western empire, yet there have always been bright spots somewhere. The ancient spirit of liberty and law has always lived in the breasts of some of the sons of the peninsula, and from time to time has found expression in the institutions of her cities. The learning and arts of the Greeks and Romans have never been entirely lost. Ravenna, Venice, Milan, Genoa, Naples, Florence, Pisa, Verona, Mantua, Bologna, Parma, Pavia, Siena and scores of other cities, including old Rome itself, have at times exhibited regard for justice and the blessings of peaceful industry and beneficial enterprise. Not their wealth, but their inability to make wise and just disposition and distribution of it and their jealousy of rivals have proved their ruin. The church lost its hold on the consciences of men when its main aims became the gathering of wealth and the increase of power. Though the Italian cities severally were able to accomplish brilliant results, the ancient capacity for organization, which characterized Rome, was lacking. Confederacies like that of the Lombard cities might successfully resist a foreign aggressor for a time, but

no system was developed which effectually provided either for continued coöperation against outside foes or for the determination of controversies between the different cities and their citizens arising from conflicting interests. Faction soon became strife, and the utterly senseless quarrels of Guelphs and Ghibellines covered the streets of the cities with the blood of rival parties and armed city against city and state against state. Conflicting claims of Pope and Emperor to power added to the turmoil and intensified the hatred of factions. Factional strife as usual resulted in the evolution of tyrants, from whom the people hoped at least for order. Then came the age of mercenary soldiers hired by petty tyrants to fight their wars, of intrigue and deception, for which the statesmen of the Italian states gained unenviable notoriety.

The fifteenth century found Italy divided into five states, the kingdom of Naples, the duchy of Milan, the Popes dominions, and the republics of Venice and Florence. The last named cities held high rank in commerce and domestic industries. This was a period of power for the Pope and of Venetian dominance on the sea. Then followed that struggle for dominion in Italy between the kings of Austria, France and Spain, with its varying combinations, always resulting in the domination of foreign rulers over more or less of the country, which lasted till recent times. Local dukes and princes were for the most part dependents on the rulers of one or another of these great kingdoms.

Italy became the field of contest between Republican France and despotic Austria in 1796, and as a result of Napoleon's successes temporary republics were established. Later Napoleon established his authority and ruled through his representatives, but the congress of Vienna in 1815 undid all his work and again divided Italy into petty states.

Victor Emanuel, whose ancestors had enjoyed more or less power in Savoy, Burgundy and Lombardy from the tenth century, was accorded the kingdom of Sardinia, including Piedmont and Genoa. Austria held Venice and Milan, the Pope the states of the church, and the Bourbon prince Ferdinand Naples and Sicily. Austrian influence dominated, and

despotism in all its odiousness returned. In 1820 revolts occurred, which were soon suppressed by the combined forces of Austria, Great Britain and Bourbon France. Trials of leaders and persons obnoxious to the rulers by courts organized to convict followed, and the hand of despotism put many patriots to death as traitors. In 1830, following the uprising in Paris, there were outbreaks in some of the cities, which were soon suppressed. The desire for Italian unity and freedom spread not less rapidly for the iron rule of the princes. The advocates of a republic, though forced to act in secrecy, continued their agitation and contrived to hold meetings ostensibly for other purposes. The scientific congress professing to be devoted to scientific research was in fact a cover for republican gatherings. On the accession of Pius IX to the papacy he proclaimed a general amnesty for political offenses and sided with the liberals. In 1847 constitutions were granted in Rome, Piedmont and Tuscany. Austria and Naples refused to make concessions, and in 1848 a demonstration at Milan by the liberals was made the occasion of the slaughter of many citizens in the streets. Uprisings at Naples forced the allowance of a constitution in 1848. In response to the popular demand the king of Sardinia made war for the liberation of the Austrian provinces, but without success. Opposition to the war by the Pope caused an uprising at Rome, which resulted in the temporary establishment of a republic. The Pope was resorted to power by the French in 1849. The dukes of Parma, Modena and Tuscany, who had been scared from their dominions, returned under Austrian protection, and the old order of things was restored. In 1859 France came to the aid of Sardinia, and as a result of a brief campaign Sardinia gained Tuscany, Modena and Parma, but at the price of the concession to France of Savoy and Nice. This was soon followed by a revolution in the south of Italy. Under the lead of Garibaldi Sicily was soon overrun, and crossing to the main land Naples was taken. In 1861 this kingdom voted to be annexed to that of Sardinia, and Victor Emanuel was proclaimed King of Italy. As a result of the Austro-Prussian war, in which the Italians took part with the Prus-

sians, Venice was restored to Italy. The French revolution of 1870 resulted in the withdrawal of French support from the Pope, and on the twentieth of September 1870 Victor Emanuel entered Rome and made it his capital, the Pope retaining the Vatican with its dependencies. In these recent wars for the liberation of Italy the republicans have been the popular leaders, and republican enthusiasm has given the energy which has resulted in the establishment of the present limited monarchy. The constitution is essentially that granted by Charles Albert. The crown is hereditary in the male line of the house of Savoy. Legislative power is in the king and parliament, and the king on his accession is bound to take an oath in the presence of both chambers, that he will obey the constitution. His style is "by God's grace and through the will of the nation King of Italy": thus recognizing the concurrence of divine and popular will. The executive powers of government are exercised through a ministry responsible to parliament, composed of nine members namely, Foreign Affairs; Interior; Public Instruction; Finance; War; Marine; Grace; Justice and Worship; Public Works; and Agriculture, Industry and Commerce: The Senate consists of the princes of the royal family and an undefined number of persons forty years of age or over, appointed by the king from the archbishops, bishops, ministers, high officials, admirals, generals and other persons of wealth or distinction. There must be an election of members of the chamber of deputies at least once in five years. All males twenty-one years of age or over, who pay taxes to the amount of twenty *lire* and can read and write, are allowed to vote. There are 508 members of the chamber of deputies. In 1865 the whole kingdom was divided into sixty-nine provinces and eight thousand five hundred and forty-five communes, but many changes have been subsequently made in the arrangement. In each province there is a prefect appointed by the king and a council chosen by the same electors, which elects its own president and has supervision of provincial affairs. In each commune there is also a council having charge of the local affairs with power of local taxation. The Italian government is still essentially aristocratic, but the difficulties with which

Italian statesmen have been confronted were very great. No other country included so large a percentage of beggars and idle poor. Brigandage and lawlessness, extreme ignorance, religious bigotry and general incapacity for public affairs, prevailed in many localities. Though Italian cities are still seats of learning and culture and the homes of men of a very high order of intelligence, morals and education, Rome, Naples and other cities contain great masses of depraved men and women, from whom little that is good need be hoped for at once.

In the matter of education though the government exhibits most commendable solicitude, Italy is still far behind most European states. Each commune is bound by law to afford primary education and attendance is made compulsory, but there are still very many places where schools are not maintained for all, and many children who do not attend. There are seventeen national universities and numerous special schools of high order. The judicial system has at its head five courts of cassation, at Rome, Turin, Florence, Naples and Palermo. Below these are twenty-three courts of appeals in the principal cities. The number of courts of assize varies at the pleasure of the king. Trials of criminal cases are by jury, and the death penalty is no longer inflicted. There are one hundred and sixty-two civil and correctional tribunals, and 1813 praetors having jurisdiction in civil causes involving less than 1500 lire and also in criminal cases. It is a part of their duty to effect compromises of litigation without trial. There are also special judges, styled *conciliatori*, to aid in bringing about settlements, and about one-fourth the causes are said to be disposed of in this manner. The principles of the Roman law still afford the basis of the modern system of Italy, though changed in many particulars.



## CHAPTER XVIII

### SPAIN AND PORTUGAL

Of the habits and organization of the people of Spain at the time it first became known to the Greeks and Phoenicians or later to the Romans we know very little. They are mentioned as barbarous tribes. The Phoenicians were the first to make settlements and establish trading ports on the coast. Gades, Tartessus and Tarraco are said to have been flourishing towns as early as the seventh century B. C. Carthage, itself a Phoenician colony, had acquired a kind of dominion over the peninsula by the time of the first Punic war, 264 B.C., but had not succeeded in establishing a settled government over the interior tribes. Considerable progress was made by Hamilcar and Hasdrubal in extending their rule over the peninsula prior to the second Punic war, but, beyond the facts that they were backed by strong armies and at the same time encouraged matrimonial unions between their followers and the natives, little can be told of the system by which they governed. During this war the Romans invaded Spain, and by 205 B.C. they had taken the mastery of the country out of the hands of the Carthaginians. The process of planting Roman colonies and introducing the Roman system met with much resistance from the interior tribes, and it was not till the time of Augustus that the whole peninsula to the Pyrenees became pacified. The Roman system then became general, and under it Spain enjoyed a marked degree of prosperity and exemption from war for nearly three hundred years, though sorely oppressed by the tax gatherers.

Under Augustus Spain was divided into three provinces, Boetica in the southeast with Corduba for its capital, Lusitania, corresponding to modern Portugal, of which Emerita Augusta was the capital, and Tarraconensis, covering all the remainder, with Tarraco for its capital. Of these Boetica,

the most orderly and thoroughly Romanized, was a senate province, and the other two were imperial provinces, of which the Emperor named the governors. The whole peninsula was divided into fourteen *conventus*, each made up of a combination of communities within the district, and having a chief town at which justice was administered. In the time of Vespasian 360 towns are enumerated, including those having the full Roman franchise, those having the inferior franchise, the *colonia*, and the tributary towns, on the inferior classes of which he conferred Latin rights. Spain became one of the most thoroughly Latinized of all the Roman provinces, and all the characteristics of Roman civilization were developed throughout the peninsula. The vine and the olive were successfully planted, and agriculture flourished. The rich mines were opened, and the working of metals and weaving of fabrics were industriously followed. Latin became the language of the country, and among its sons the two Senecas, Lucan, Florus and Martial, were types of philosophers and poets of high order. In politics Spain can boast of having produced a Trajan and a Hadrian, who, during forty of the best years the Roman empire ever knew, directed its affairs. The first great shock came in 256, when the Franks passed the Pyrenees and spread destruction over the peninsula. Tarragona was sacked and almost destroyed, and for twelve years the rich provinces were desolated and scourged by the barbarous invaders. After this storm another era of peace and prosperity followed till 409. Contemporaneous with the sacking of Rome by Alaric, a tide of Suevi, Alani and Vandals swept over the country and desolated it. About 414 a Visigothic horde under Ataulphus and as an ally of Rome entered the country. Soon afterward Ataulphus was murdered and his successor Valia made a treaty with the Emperor Honorius, by which he nominally acknowledged the imperial sovereignty, and thereafter proceeded to subdue the Suevi, Alani and Vandals. Although he was able to extend his authority over most of the peninsula, he was not able to thoroughly subdue these tribes, and for many years there was warfare between the Romanized Goths and the German tribes. About 429 the

Vandals, led by their king Genseric, passed into Africa and established their dominion there. Under Euric, 466 to 485, the Gothic state was extended over a large part of Gaul, and the seat of government established at Bordeaux. Euric was a legislator as well as a warrior, and he caused to be collected and embodied into a written code the "Customs of the Goths." His successor Alaric II caused the work to be revised and enlarged by civil lawyers, incorporating many of the principles of Roman civil and ecclesiastical law. Roman sovereignty gradually gave way even in name to the actual rule of the Goths. The Gothic dominion soon yielded north of the Pyrenees to that of the Franks, but continued in Spain with many wars and frequent domestic upheavals till the advent of the Saracens in 711. Under the Goths the people were ruled by an elective monarch and an hereditary aristocracy, representing the temporal power, and by the church, which soon gained a predominant influence in the state. Bigotry, persecution and the Inquisition, exhibited their barbarities, and by their side the Christian doctrine of the equality of all men before the law found place in their code. The barbarisms of valuing men's lives according to rank, of judicial combat and trial by ordeal, were unknown. The succession to the Gothic throne was often contested, and many occupants of it fell by the hands of assassins. Here as elsewhere the dangers of wearing a crown failed to deter men from seeking the coveted prize. The Goths were Arians, though the major part of the Spanish population adhered to the orthodox faith. In the latter part of the sixth century King Ricared adopted the Catholic faith and proceeded vigorously and successfully with the conversion of his subjects. From that time forth Spain became the most reliable of Catholic states. Religious zeal, whetted possibly by the known wealth of the Jews, who dwelt in Spain in great numbers, caused their cruel and bloody persecution and a decree for the expulsion of the last of them from the country at the time when the Mohammedan power was spreading over northern Africa.

The Jews invited the Saracens to invade Spain, but it can hardly be said that their encouragement was the cause of the

invasion. In 711 Tarik with 5,000 men landed at Gibraltar. This force was inadequate to the task before it, and Tarik wisely awaited reinforcements before hazarding a decisive battle. Having received large accessions to his force both from Africa and from disaffected subjects of Spain, he marched out and destroyed the army of King Roderic in a long and hard fought battle, in which the tide was turned by the treachery of a part of Roderic's army. Tarik at once took advantage of his success and quickly overran the country. A state which it had taken the Romans two centuries to subdue was overrun and reduced by the Saracens in a few months. The rapid success of the Mohammedan armies in Spain, as elsewhere in the early days of religious zeal, was largely due to the superior treatment by them of conquered people. The alternative of the "sword, the tribute or the Koran" offered to those capable of adapting their beliefs to their material interests an easy escape from all oppression, and even when the tribute was imposed, it was a more moderate burden than many of the Christian rulers placed on their subjects. An example of this is given in the terms of the capitulation of Theodomir to Abdelazis after a stubborn resistance.

"In the name of the most merciful God, Abdelazis makes peace on these conditions, that Theodomir, shall not be disturbed in his principality, nor any injury be offered to the life or property, the wives and children the religion and temples of the Christians . . . that he shall not assist nor entertain the enemies of the Caliph, but shall faithfully communicate his knowledge of their hostile designs, that himself and each of the Gothic nobles shall annually pay one piece of gold, four measures of wheat, as many of barley, with a certain proportion of honey, oil and vinegar, and that each of their vassals shall be taxed at one moiety of said imposition." This was dated in the ninety-fourth year of the Hegira.

Not content with the possession of Spain, the Saracens passed the Pyrenees and overran the southern part of Gaul, till their crushing defeat near Tours in 732 by the Franks under Charles Martel put a definite end to their encroachments. By 759 they abandoned all possessions beyond the Pyrenees.

The struggle for the mastery of the Mohammedan world carried on in the east resulted in the overthrow of the Omayyads and the destruction of the members of the royal household, except Abd-al-Rahman, who effected his escape to Spain, where he was warmly welcomed and after a struggle with the Abbasid adherents succeeded in establishing his authority. Though he and his immediate successors assumed the modest title of *emir*, all connection with the Caliphate was in fact severed and the independence of Spain was maintained. Under Abd-al-Rahman a struggle for mastery against opposing factions aided by the then overshadowing power of the Franks resulted in the firm establishment of his power and a long era of peace, during which the schools of Cordova took high rank, and the study of mathematics, astronomy, medicine and kindred sciences was carried to the highest stage anywhere attained at that time. His descendants, who succeeded him in authority, left notable monuments of the wealth produced by the skill and industry of the people. The elegances of eastern civilization and the public utilities of roads, bridges and aqueducts, so characteristic of the Roman provinces, were exhibited in city and country in forms which have excited the wonder and admiration of later generations. To clearly comprehend what is sometimes called Moorish civilization it must be borne in mind that the Mohammedans merely imposed their own authority and civilization on that which they found in Spain on their arrival. The country was not cleared of its ancient inhabitants, but the descendants of Phoenicians, ancient tribes, Greeks, Romans and Germanic tribes still inhabited it and constituted a great majority of the population. In agriculture the Roman system prevailed. In trade Jews as well as Romans played an important part. In the arts and sciences the rulers wisely encouraged men of skill and learning from all parts of the world to teach as well as to labor among their people. The wealth of Spain was not alone in gold, silver and the works of laborers' hands, but in knowledge as well, and Cordova could boast of its library of 600,000 volumes. The prosperity of Spain under the Omayyad dynasty illustrates the advantages of combining different civilizations

in a proper spirit. The Arabs and their eastern followers brought with them the arts and acquirements of the east, which were added to the Roman civilization which preceded them. Each profited from the peculiar knowledge of the other, and each was stimulated to better effort in useful callings. But the Omayyads also brought with them the seeds of the destruction of their empire. Religious bigotry, polygamy, the seclusion of women, and a despotic theory of government, worked out their natural results. How false the life of a typical oriental potentate is was pathetically expressed by Abd-al-Rahman III who ruled from 912 to 961, and under whom the height of oriental magnificence was maintained, in a memorial in which he said, "I have now reigned above fifty years in victory or peace, beloved by my subjects, dreaded by my enemies, and respected by my allies. Riches and honors, power and pleasure have awaited on my call, nor does any earthly blessing appear to have been wanting to my felicity. In this situation I have diligently numbered the days of pure and genuine happiness which have fallen to my lot; they amount to fourteen. O man! place not thy confidence in this present world." Like most others in similar station he failed to comprehend his own vices, and that he daily transgressed the laws of healthy life. In his multitude of secluded ignorant women he lacked a worthy wife. In the abundance of the fruits of the labors of others with which his wants were supplied he lost the healthy relish which comes from useful effort. In the exercise of despotic power over the lives and fortunes of others he was not disciplined by the salutary resistance which the freely expressed judgments of others of equal capacity afford. Most of all, in his exalted station he lacked the sympathy and fellowship of others. Of the brotherhood of man he had no comprehension, and without it he could not realize the fatherhood of God.

The Mohammedans, having extended their dominion over all the rich provinces of Spain, allowed a remnant of the Goths to take refuge in the mountainous district of the northwest. There Pelayo and a few hardy followers preserved their independence. Christians who preferred the hard life

of the mountains to submission to Moslem rule in more genial districts, joined them, and thus the little state grew. Alfonso, the grandson of Pelayo, extended his possessions over Galicia, and his son fixed his capital at Oviedo. Though in name Christians, the Visigoths were still warriors whose principal employment was fighting the Mohammedans and each other. Succession to the throne of the petty state was often the occasion of internal discord, and the record of assassinations and fratricidal wars for the throne is similar to that of other kingdoms of that time. By the end of the eighth century the kingdom of Oviedo was fairly well established and had defeated the Moslems in several great battles.

In 801 Charlemagne extended his power into the northeast of Spain and established a mark there, over which the Count of Barcelona ruled as representative of the Frankish Emperor. On the breaking up of the Empire the district of Catalonia was subject to frequent transfers of sovereignty, being sometimes under a local ruler and at others subject to Gaulic kings. About 900 Sancho founded the kingdom of Navarre, in the district in which the ancient Basques had taken refuge from the invaders, and into which later the Suevi withdrew before the Visigoths. The possessions of the kings of Oviedo were extended into Leon and Castile, and Sancho the great of Navarre extended his rule over Aragon. The German custom of dividing kingdoms as a patrimony among the sons prevailed, and the number of separate states depended on the number of sons of the kings and the success of one in taking the share of another by fraud or force. Thus the states of Leon, Castile and Aragon were formed. The mixed population of that part of Spain still held by the Arabs and the conflicting religious beliefs and priestly leaderships were a source of never ending trouble to the rulers. The ninth century was a period of disorder, revolts and divided authority throughout the Mohammedan dominions, but much the same conditions prevailed among the Christians, and they neglected the opportunities which the times afforded for the expulsion of the Mohammedans. Abd-al-Rahman III ascended the throne of Cordova in 912 and assumed the title of caliph. Though he

did not succeed in establishing his sovereignty over the Christian districts in the northern portion of the peninsula, such was his success in encouraging trade, agriculture and manufactures, that the country enjoyed unexampled prosperity, and his revenues were sufficient to enable him to maintain an efficient army and navy and to annually devote vast sums to the construction of public works and buildings. Of all the rulers of his time he expended most of the money taken from his subjects by taxations for their education and for aqueducts, bridges, roads and other objects really beneficial to them. The century following the accession of Abd-al-Rahman III to the throne was the golden age of the Mohammedan dominion. In the early part of the eleventh century the state fell into disorder and civil war, and in 1031 by the abdication of Hisham III the Omayyad dynasty, which had ruled for three hundred years, came to an end; all central authority ceased and the state was split into disorderly fragments. It is noteworthy that under these conditions the largest and most enlightened cities, the great seats of learning and the arts, Cordova and Seville, were organized as republics.

Following the fall of the Omayyad dynasty there was a period of great discord and disorder in the Moslem districts, and the Christians made a substantial acquisition of territory. Among Mohammedans and Christians alike most of the civil strife and bloodshed resulted from the ambitions of the nobility and the descendants of princes. The thirst for power was their dominant passion; wars against those nearest in blood were common, and treachery and assassination of brothers and other near relatives not infrequent. Those whom the people followed led them to destruction. Rulers were rarely actuated by any motive of duty or public service, but usually the sole object of each was to aggrandize himself. The struggle between the followers of the two religions was not less mercenary, but had the added force of the desire for priestly dominion on either side, and the warriors were stimulated to risk their lives under promise of a sure reward in a life to come, each side equally confident that his God was the true God and that he fought against infidelity and falsehood.



In the time of Gregory VII the Christians of Spain, who had been somewhat isolated, adopted the ritual of the Roman church and thenceforth became the most servile of its followers. The successes of the Christians induced the *emir* of Seville, then the most powerful of the Moslem princes, to call to his aid Yussef, the king of the Almoravids, who ruled over a vast African empire with Morocco as his capital. In response the king came with a strong army, and Alfonso VI of Castile, aided by the King of Aragon and Count of Barcelona, was defeated in a great battle at Zallaka in 1086. Having been recalled to Africa by the death of his son, Yussef again crossed into Spain in 1090, and by the end of the century all the Mohammedan districts of Spain were united under the rulership, not of a Spanish prince, but of the King of Morocco. Alfonso VI of Castile had extended his power to such extent as to assume the title of emperor of Spain, but before his death the Moorish power curtailed his dominions. Thereafter his ambitious daughter Urraca warred with her husband Alfonso of Aragon, and as the result Alfonso ruled Aragon and Navarre and her son by her first husband, as Alphonso VII, ruled Castile, Leon and Galicia. In this age of crusades Spain also had its crusading orders, formed to fight the infidels, the Calatrava founded in 1158, that of St. James Compostella in 1175 and of Alcantra in 1176. In the kingdom of Portugal, which grew rapidly in the twelfth century, there was the order of the Evora. In Africa Abd-al Mu min, as leader of the sect of Almohades, overthrew the empire of the Almoravids and then crossed into Spain. The Spanish Almoravids called to their aid the Christian kings of Castile and Aragon, but their combined forces were unable to cope with the victorious Moors, and a second Moorish rulership was imposed on the fairest part of Spain. The feuds and dissensions in the Christian states gave the Moors a respite from danger from that quarter, but a revolt of the Almoravids in 1199 was followed by five years of civil strife, and soon afterwards a confederation of the kings of Castile, Aragon, Leon, Navarre and Portugal, was effected, mainly through the influence of the Pope and clergy, and on July 16, 1212 in the

great battle of Las Navos de Tolosa the Moors sustained a defeat from which they never recovered. The old Arab leaders gave way in the district still held by the Moslems to the Moorish element, which thereafter dominated. In 1230 Castile and Leon were united under Ferdinand III, who extended his possessions at the expense of the Moslems, capturing Cordova and Seville, their chief cities, and others of less importance including Cadiz. During the same period the king of Aragon extended his dominions over the Moorish possessions in the Balearic Islands, Valencia and Murcia, so that by 1266 the Moors were confined to Granada. By this time Portugal had acquired substantially the same territory it now possesses. Though reduced within such narrow territories, the Moorish state, which had been reduced to a homogeneous population, continued without material change in its dimensions for more than two centuries. Its history is one of struggles of aspirants for power with each other, of dissension and civil war, with occasional collisions with the Christians, as well as alliances at times.

The organization of society in the states of Castile and Aragon, which had now taken most prominent place in Spain, was similar to that of many other states in which Germanic elements were dominant, though modified somewhat by religious and local influences. The power of the King of Castile was not absolute. The cortes, which originally was a meeting of the great nobles and royal household, in 1162 admitted to membership deputies from the cities, who at first were elected by vote of all free citizens and afterward by the city magistrates. The national assembly of the cortes was made up of three estates, the clergy, nobles and representatives of the towns, who deliberated separately at times and as one body at others. The two first named orders were exempt from taxation. The feudal system took root in Christian Spain. The nobles exercised judicial powers in their domains, and the bishops and higher clergy decided causes within their jurisdiction in accordance with the laws of the church. The nobles and towns exercised the right of forming confederations for the protection of their rights by force, and the actual admin-

istration of government was mainly local under the clergy, nobles and town authorities. Grants of taxes were made by the cortes, and in these matters at times only the third order, who represented taxpayers, were allowed to participate.

The constitution of Aragon was still more restrictive of the kingly power. The cortes consisted of four estates, the great nobles, the equestrian order, the clergy and the representatives of the towns. The concurrence of all was essential to the passage of a law, and they exercised the right of supervision over the administration of justice and the expenditures of public moneys. The cortes assembled once in two years, and the king had no power to dissolve it. A most important officer was the *justiza*, appointed by the king from the equestrian order. He could be removed only by the cortes, to whom alone he was accountable for his official conduct. His person was sacred, and he was the supreme interpreter of the laws. He could call the king's ministers to account and even dismiss them from office for misconduct. Through him the oath of allegiance was expressed on behalf of the barons in the following form: "We who are each of us as good as you, and who are altogether more powerful than you, promise obedience to your government if you maintain our rights and liberties, but not otherwise." The cortes was not only the law-making power but the supreme court of justice, presided over by the *justiza*. The office gained dignity and power from the appointment of men of exceptional character and ability, who exercised a marked influence on the affairs of the state. Though the kingdom of Aragon by 1213 included Catalonia and Valencia, each of these provinces had its separate cortes and was governed in accordance with its own laws, to which the people jealously adhered. The great nobles, in accordance with the feudal customs of the times, waged private wars and demanded their shares of all conquests made by the state. The constitution of the cortes in Valencia and Catalonia was essentially the same as in Castile, having but three orders.

Alfonso X of Castile, who came to the throne in 1252, caused a code of laws to be prepared, based on the civil and canon laws, called the *Siete Partidas*, but the adoption of it

by the cortes was not effected till 1348, long after his death. The history of Castile from the time of Alfonso X to the union with Aragon is similar in its leading particulars to that of other European states where the feudal system prevailed. The kings and great nobles, instead of preserving the general peace by their wisdom and moderation, were turbulent, contentious and often cruel. Civil war often followed the demise of the king between factions supporting opposing claimants to the crown. When the crown was not an available pretext for war, the jealousies and rivalries of the nobles afforded other pretexts for bloody strife. Neighboring kingdoms also came in for their shares of the horrors of war, and during this period the Christian kings caused their subjects to war with each other quite as much as with the followers of the Prophet. In Spain as elsewhere in Europe the great nobles imposed a check on the power of the kings, which at times was reduced to little more than a shadow. The towns also preserved some measure of independence, but by taking the choice of delegates to the cortes from the mass of citizens and vesting it in the magistrates popular influence was greatly restricted and the opportunity for corrupt influences correspondingly increased. Throughout the country districts of Castile the rule of the nobles was despotic and the condition of the common people that of serfs.

In Aragon there was far more of genuine restriction on arbitrary power. The king was even less potent than in Castile, and the *justiza* and cortes gave the townsmen and common people some measure of protection. In Catalonia there was much genuine republican spirit. Still in Aragon the nobles through the theory of ownership of the land retained control of the face of the earth and dictated to the multitude the terms on which they might live. Aragon had its written fundamental law, in 1283, called the "General Privilege," which placed limitations on the powers of the king and contained substantial provisions to secure the citizens against arbitrary power, but it was far from an effectual protection for the common people. In 1287 Alfonso III signed what is termed the "Privilege of Union," which allowed the subjects

to take up arms against the king if he attempted to infringe their liberties. Pedro IV revoked it in 1348 after putting down a serious revolt. While doing this he swore to respect the personal and political liberties of his subjects. Through the claims of its rulers to the throne of Sicily, Naples and Sardinia, Aragon became involved in foreign politics and wars, and while the King of Aragon for a time ruled also over portions of Italy, no close union of the detached territories was effected, but each retained its customs and laws. In the thirteenth and fourteenth centuries the kingdom of Navarre was more closely connected with France than with Spain. Through various alliances of its reigning house with other rulers there were frequent changes in its rulership and territorial connections. In the fourteenth century by the marriage of John of Gaunt and Edmund of York to daughters of Pedro, King of Castile, claims to the Castilian throne arose, which brought English troops into the peninsula, and alliances with the French king shifted according to the prevailing influences of the time. The dreary details of intrigues and wars in the interest of contending princes are so similar in their essence that it seems altogether idle to follow them. While a victorious leader may gain a name and be called a hero, the net result of the strife is always misery, woe and death to the multitude.

The kingdom of Portugal developed from the fief of Terra Portucalensis, which Alfonso VI of Castile conferred on Henry of Burgundy in 1094. Its independence dates from the reign of Alfonso Henriques, renowned as a crusader against the Moslems. He reigned from 1128 to 1185. In his wars he received some aid by Templars and crusaders from Germany, Flanders and England. Alfonso II (1211 to 1223) summoned the first Portuguese parliament, which was constituted of high church officials and nobles. The feudal system prevailed there at that time, and the church had extended its possessions to such extent as to induce Alfonso to propose a statute of mortmain, prohibiting further acquisition of church lands. Under Alfonso III the boundaries of Portugal were extended to include substantially its present territory,

and in 1254 he summoned a cortes, in which representatives of the cities were admitted to sit with the clergy and nobles. While Alfonso received from the city representatives the aid he anticipated in his contests with the clergy, on the other hand they denounced his tampering with the coinage and compelled recognition of their control over the levy of taxes. John I who came to the throne by the choice of the cortes, concluded an alliance with England, and in 1385 John of Gaunt aided him in his war with Castile with an army of 5,000 Englishmen. His reign witnessed the increase of the possessions and power of the great nobles by grants of lands. In the fifteenth century the Portuguese took the lead in nautical explorations and extended their voyages along the coast of Africa.

In 1485 Bartholomew Dias rounded the Cape of Good Hope, and in 1497 Vasco Di Gama reached India by way of the cape. The Portuguese promptly took advantage of these discoveries, and in 1505 Almeida was sent as viceroy to India. In 1520 Magellan, a Portuguese in the Spanish service, sailed through the straits at the extremity of South America into the Pacific Ocean. The foreign trade, which developed in consequence of these discoveries, brought rapid increase of wealth, but it also brought the poison of African slavery. The lands, especially in the south, were cultivated by black slaves. Though John II in 1484 had broken the power of the feudal lords by the drastic remedy of putting about eighty of the leading ones to death, the evils of a state made up of a few masters and many slaves rapidly developed along with the increased wealth. Bigotry was not confined to Spain, and in 1536 the Inquisition was introduced into Portugal with the same cruel and disastrous results as in Spain. The material advantages acquired by the discoveries of her seamen were not preserved to the nation. Corruption in official stations, especially in the colonial governments, and emigration caused by bigotry and oppression at home weakened the foundations of the state. In 1578 Sebastian invaded Africa and sustained a crushing defeat. Two years later Portugal was forced to submit to the dominion of Philip II of Spain.

Ferdinand and Isabella were married in 1469. On the death of Henry IV of Castile in 1474, each claimed the throne, but the succession was ultimately settled on Isabella. Henry's daughter Joanna was also a claimant, supported in her pretensions by a faction of the nobles and also by her uncle Alfonso V of Portugal. Her adherents were defeated in battle. On Jan. 20, 1479, John II, of Aragon died, leaving to his son Ferdinand the succession to the thrones of Aragon, Sicily and Sardinia. Though Ferdinand and Isabella thus came into possession of the kingly office of all these countries, they were not thereby consolidated into one kingdom, but for the time each retained its separate system of laws. Navarre, which came to John II by his first wife, passed to their daughter Eleanor. Ferdinand and Isabella set about increasing their own power and restricting the privileges of the nobility. In 1476 the *Santa Hermandad* was organized as a popular confederation throughout the whole of Castile for police and judicial purposes. Its members were of the burgher class and its affairs were managed by local courts, from which an appeal was allowed to the Supreme Court, and by a junta of deputies from all cities convened annually. A body of 2,000 cavalry was placed at the disposal of the brotherhood, and a special code of laws for its use was compiled in 1485. The jurisdiction assumed by the Brotherhood curtailed by so much that of the nobles, and afforded something like protection against their tyranny and injustice. The administration of justice took on some of the characteristics of a regular system, and educated lawyers were appointed to the chief judicial positions. To further strengthen the powers of the sovereigns they secured the grandmasterships of the powerful military orders of St. Iago, Calatrava and Alcantara, which in independent hands might prove dangerous. Lavish grants of crown lands were revoked and the domains reclaimed. Under the prudent administration of Isabella, to whom the credit of administrative reforms is given, the revenues were increased from 885,000 *reals* in 1474 to 26,283,334 in 1504 without the imposition of any new taxes, but the latter sum was received after the acquisition of Granada and includes its taxes. In his

appointments to official positions Ferdinand chose men attached to his interests, without regard to their rank, and built up a personal following on which he could rely. Few sovereigns have exercised so profound an influence on the institutions and characteristics of a state as Ferdinand and Isabella. Being both most devout Catholics, they set about removing the last vestige of Moslem power from the peninsula, and after a long and bloody war on Jan. 2, 1492, they entered Granada, the last stronghold of the Moors, in triumph. The religious zeal of Ferdinand accorded with the prevailing sentiments of the great mass of his Christian subjects, and by a skillful use of the religio-military orders and priestly influences he attached to his interests sufficient force to enable him to overawe and master the proud Castilian nobility. It accorded with his general policy as well as his religious bigotry to introduce the institution of the Inquisition into Spain. In 1478, on the application of the king and queen, Pope Sixtus IV issued his bull for the establishment of the Holy Office, as it was termed, in Spain, and granting it the right to appoint the inquisitors. In 1480 the first were named from among the Dominicans, and early in 1481 they began their work at Seville. The ostensible purpose of the Holy Office was to inquire into and correct errors of religious faith, and thereby preserve and protect in its purity the Christian religion. The safety of human souls according to the doctrines of the church depended, not on conduct or morals, but on belief in the established creed and observance of church forms and requirements. Disbelief of its doctrines or noncompliance with its ceremonies was magnified into crime and given the direful name of heresy. To discover and suppress heresy was the mission of the Holy Office. In Spain the Christians had to deal with Mohammedans and Jews, stiff necked and perverse unbelievers, on whom it was deemed useless to use argument or persuasion, for they had deliberately chosen to follow false doctrines. Many of them were also guilty of another offense, which may have incited the activity of the inquisitors quite as much as errors of faith, namely that of possessing wealth. It was intolerable that heretics should live in peace and enjoy wealth while the



king and clergy wanted money. The new tribunal commenced its work vigorously, and in the first year 298 victims were burned at Seville alone and their estates confiscated. In answer to protests from citizens who did not approve of this barbarity, the Pope ordered a more mild administration of the Holy Office and named the archbishop of Seville as sole judge of appeals in matters of faith. In 1483 Thomas of Torquemada was named by the Pope inquisitor general for Castile and Leon, and he proceeded to organize his dread tribunals. He was the president of the court with two lawyers as assessors and three royal counsellors. This force being found still insufficient for the work, a central court was organized styled the *Consejo de la Suprema*, composed of the inquisitor general, six apostolical counsellors, a fiscal procurator, three secretaries, an *alguazil* (chief of police), a treasurer, four servants, two informers, and such other agents as might be needed from time to time. Under this central tribunal there were four local ones. All the officials connected with the Holy Office were paid out of the confiscated estates and were therefore directly interested in finding heretics of wealth and convicting them. The Inquisition proceeded to formulate its rules, which were embodied in thirty-nine articles and defined the procedure of the Holy Office. These provided for summoning heretics to come forward and confess, fixed the penalties to be borne by the penitent and submissive, regulated the treatment of penitents in prisons, the torture to extort confessions and other procedure of trials, and authorized the condemnation of dead heretics whose estates were coveted. The Inquisition was nowhere approved by the people and occasioned a revolt in Aragon, but the combined power of the church, the religious orders and the crown maintained it. The procedure was provided with ample forms to fill the requirements of a judicial system, but none of them were designed to afford protection to an innocent person falsely accused. When complaint was made, a preliminary examination was held and the result reported to the tribunal. If the case was regarded as one calling for action, the informers and witnesses were reexamined and the evidence submitted to "the

Qualifiers of the Holy Office," a body of priests. These having given their opinion against the accused, as was their custom, he was removed to the secret prison of the Office and cut off from all communication with the outside world. Then followed three "first audiences," in which the officials did their best to extort a confession. If unsuccessful in this the fiscal in charge demanded torture to extort a confession. After torture, for which the most fiendish devices were used, the victim was taken before the court, where the charges were for the first time read to him, and he was asked if he desired to make a defense. If he answered that he did, he was allowed to choose a lawyer from a list furnished by the court, all of whom could be relied on to offer no obstacle to a conviction. After all the evidence was in the Qualifiers were again called on for their opinion on the whole case. This being adverse to the accused, he was sentenced with privilege of appeal to the Supreme tribunal or to the Pope. These appeals afforded a chance for the friends of the accused to contribute their means to the papal treasury. If, as sometimes happened, the victim was at last acquitted, he might retire to his home, broken in body and ruined in fortune with no redress against his accusers. If condemned, he was brought before the court, regaled with the solemnity of the *Auto-da-fé* and informed of his fate. He might then become reconciled and as a penitent submit to the severe penalties prescribed, or, refusing to do so, he was "relaxed," that is turned over to the secular authorities to be burned; for the church shed no blood!

Later under Ximenes the institution was further extended by the organization of ten tribunals, at Seville, Jean, Toledo, Estramadura, Murcia, Valladolid, Majorica, Pampeluna, Sardinia and Sicily, and under Charles V and Philip II it was extended and performed its horrible work on the Protestants of the Netherlands, of whom great numbers were tortured and burned. The institution was introduced into Portugal in 1536 on the solicitation of John III, where it performed its deadly office with great vigor. Its blighting influences were manifested by a marked decrease of the population of Spain and Portugal and by the crushed spirit of the people. Literature

could not thrive where almost any publication was liable to be found by the Qualifiers to contain heretical expressions. The figures given of the numbers who in Spain became victims of the Holy Office prior to 1810 are sufficiently appalling, 31,912 burnt alive, 291,450 imprisoned as penitents and 17,659 burned in effigy and their estates confiscated. But this by no means indicates the full measure of misery and evil caused by this awful wickedness. Great numbers left their homes and perished in foreign lands to escape its hands, and all freedom of expression and intellectual progress were blasted. Though acting with close observance of forms and executing what were regarded as written laws, sanctioned by that authority most highly venerated, the Roman Church, in their actual workings these tribunals utterly disregarded all law, human and divine, and trials before them were conducted by methods that could not fail of the most diabolical results. The accusers were the judges and profited by every conviction. The proceedings were secret, and the accused denied all tests by which the falsity of the evidence against him could be shown, or by which facts favorable to his innocence might be established. Confinement and torture were inflicted on those accused, whether guilty or innocent. But beneath all this the whole system was utterly wanting in any moral basis. The alleged crime of heresy is a myth. The opinions on religious subjects of one mind are as sacred as those of another.

Though utterly indefensible in its purposes and methods and baneful in its results, the Inquisition was still a logical outgrowth of the prevailing spirit of the times. During more than seven centuries difference of religious faith had furnished the pretext for bloody wars between Christians and Mohammedans, in which many battles were fought in either of which more men were killed for religion's sake than all whose lives were taken by the Inquisition. Though the moral sense of the Christian world of today revolts at the cruelties and rank injustice of the Inquisition, it still glories in the deeds of the Cid and the many renowned kings of Spain and Portugal who led their people to death in wars against the infidels, and draws deep satisfaction from accounts of the wholesale

slaughter of the more polished and industrious followers of the Prophet. To establish a tribunal to punish those who after the expulsion of the Moors still persisted in denying the creed of the victors was merely carrying the purpose of ridding Spain of unbelievers to its logical end. What use to drive out the Moslems by force of arms if unbelievers might still retain their wealth and dwell in security in Spain? Why kill heretics in battle if they were entitled to live in peace after their armies were destroyed? The savagery of war still gains the approval and even the admiration of most of mankind, though it has been productive in Spain of a hundred times more misery than the Inquisition.

The wars of Ferdinand were not confined to those against the Moorish followers of the Prophet, but in Italy he fought against other Christians for territory which he claimed as appurtenant to the throne of Aragon, and wrested Naples from the French king. The greatest glory of the reign of Ferdinand and Isabella came as the fruit of a peaceful enterprise for which Isabella made provisions. The discovery of America by Columbus gave Spain a prestige and an opportunity for expanding its wealth and power far outweighing all the conquests of Ferdinand in his bloody wars. The year 1492 witnessed the departure of the Moors from Spain and the opening to view of the new world. On the death of Isabella in 1504 there was a temporary separation of Aragon and Castile, occasioned by the selection by the Castilians of the archduke Philip as regent during the minority of the infant Charles, but Philip's death was followed by the choice of Ferdinand as regent. In 1512 he wrested Navarre from France, thus combining all Spain under his rule. The policy of Ferdinand, steadily pursued throughout his long reign, resulted in the concentration of the powers of government in the hands of the king. The administration was carried on through the instrumentality of five councils, the "Royal Council" as the highest court of justice, the "Council of the Supreme" for ecclesiastical affairs and the Inquisition, the "Council of the Orders" for the direction of the great military orders, the "Council of Aragon" for the management of that

kingdom and Naples and the "Council of the Indies" for the territories discovered by Columbus. The firm alliance between church and state and the religious policy established during this reign fixed the character and moulded the policy of the Spanish government till modern times, and still influence it in great measure. Ferdinand died in 1516 and Charles, son of his daughter Joanna and of her husband Philip son of the German Emperor Maximilian I, succeeded to the thrones of Castile and Aragon, and thus the House of Hapsburg came to the united Spanish throne. In 1519 Charles succeeded his father as emperor. Serious revolts followed. Charles was a foreigner by birth, reared in the Netherlands, and it was only by intimidation that he obtained supplies for his wars from the cortes. After his authority had become well established and all rebellions suppressed, Charles convened the Castilian cortes in 1523 and compelled them to grant supplies before presenting their petitions for redress, thus establishing a precedent adhered to thereafter, which gave him what he required and still left him free to reject all demands of the cortes. During his reign Cortes conquered Mexico, Pizarro, Peru, and Milan and a portion of North Africa were added to his dominions. In 1538, as a result of the refusal of the nobles in the Castilian cortes to consent to an excise tax, Charles excluded them from seats in the cortes, which thereafter consisted of only thirty-six deputies from eighteen towns, who were wholly wanting in strength to oppose the will of the king. On the abdication of the throne by Charles, his brother Ferdinand became emperor of Germany, and his son Philip succeeded to the Spanish throne and made Madrid his capital. He was a narrow bigot, and his policy was thoroughly despotic. By military force he crushed all remnants of popular liberty, and by the aid of the Inquisition he destroyed whomsoever he pleased. He caused the *justiza* of Aragon to be put to death and assumed the right of naming his successor. The control of the cortes over judicial affairs was taken away. The extension of Spanish dominions gave to the king ample power to take away the ancient privileges of the provincial cortes separately, and the Spanish people suf-

ferred from the spread of Spanish dominion. In 1580 Philip maintained his claim to the throne of Portugal by an army commanded by the Duke of Alva, and thus the whole peninsula became united under his rule. During his reign the Inquisition employed its force to crush Protestantism in the Netherlands, but met with a stubborn resistance that after the martyrdom of vast numbers of its citizens finally resulted in independence.

Philip died in 1598, leaving a great empire to his son Philip III, yet the search for gold in the New World and the prosecution of wars for the aggrandizement of the king consumed the lives of men and impoverished those rich districts, which when properly cultivated by a peaceful and industrious population yielded riches in great abundance. Though in the wilds of America priests sought to convert the heathen, Spanish policy everywhere was wanting in moral strength. Wars of conquest and the vast acquisitions of American gold failed to make good the loss of the natural returns of the efforts of her soldiers if employed in peaceable callings. The gold sufficed for only one purchase and then passed into the channels of trade. The industries of the Netherlands enabled them to keep the gold which Spain wrested from her new subjects. The narrow bigotry of Philip III found expression in 1609 in an order requiring all Moriscoes to leave Spain within three days under penalty of death. The order was wholly without justification in morals or economics, as the Moriscoes constituted the most industries, skillful and peaceful portion of the population. They were leaders in agriculture and manufactures, and their expulsion was a crushing blow to the material resources of the kingdom, as well as a most cruel and unjustifiable infliction on them. By their expulsion the revenues were greatly reduced. The desire for foreign dominion and devotion to the Catholic cause combined sufficient influence on Philip to draw him into the Thirty Years' war in Germany. Spanish troops took a leading part in that great contest and came in contact with the Swedes and their Protestant allies. The wars brought neither profit nor glory to Spain. The Dutch gained signal victories over the Spanish fleets and

destroyed their naval ascendancy, which had resulted from the discovery of America. Though great victories were gained on land, they were barren of advantageous results. An edict calling all able-bodied men to join the army resulted in a revolt in Catalonia, the driving out of the Castilian troops and the establishment of a republic under the protection of France. Still more important in its permanent consequence was the revolt of Portugal, occasioned by the same measure, and resulting in the independence of that kingdom in 1640. As a result of naval victories the Dutch took from Spain its possessions in Malacca, Java, Ceylon and much of Brazil, and forced it to abandon its claims to Holland and even to cede to them the northern districts of Brabant, Flanders and Limburg. Catalonia was soon reduced to submission. France having effected an alliance with England, forced the Spaniards to submit to still further loss of territory in the low countries. Under Philip IV and Charles II Spain continued to lose prestige down to the time of the death of the latter in 1700. The effects of religious bigotry, of despotic government, of the concentration of the wealth of the country and the ownership of the lands in monastic establishments and an indolent nobility, devoid of all enterprise and given over to luxurious living, and of a most unwise and oppressive system of taxation, are better shown by a comparison of conditions in Spain at the close of that period with those in former times, than by the mere loss of rulership over distant provinces. The population of the country, estimated at twenty millions under the Arabs and at twelve millions under Ferdinand and Isabella, had fallen to six millions under Charles. The Moors, the most industrious element of the population, had been driven out; manufactures declined, fertile districts became barren through lack of cultivation, the destruction of trees and general inefficiency of the agricultural system. After being the first naval power in the world Spain ceased to be formidable on the sea. Her foreign commerce passed into the hands of the Dutch and English merchants, and she was unable to hold the trade of even her own colonies in the new world. Education was neglected. The people

were neither instructed in letters nor in the useful arts. Nowhere else has the contrast between a fairly just and liberal Mohammedan policy and a bigoted cruel and unjust enforcement of a creed called Christian been exhibited so disadvantageously to the latter as in Spain. Nowhere else have scientific truth and the moral law been so ruthlessly superseded by a false and cruel priestly tyranny. The war of the Spanish succession, which ensued on the death of Charles II, involved no principle of interest to the multitude, but was a contest instigated by crowned heads for their own ends. France, England, Portugal, Holland and Austria were all involved, and bloody battles were fought, but at the end by the accession of the Archduke Charles to the throne of Austria and the German empire England found that the cause for which it had fought was the one most dangerous to its interests. Peace was concluded leaving Gibraltar and Minorca in the possession of England with the added privilege of importing slaves into the Spanish colonies. The right of Philip V to the Spanish throne was recognized, the cause of the Catalans, who had supported Charles, was abandoned, and they were left to defend themselves. Though they fought obstinately, the power of Castile was too great; they were crushed and all their ancient liberties were forever after denied them. Thereafter they were ruled from Madrid under Castilian laws. Later Philip neglected his subjects at home and caused many of them to fight against Austria for possessions in Italy. The contest dragged on till his death in 1744. No advantage came to Spain from the long contest, but a little added territory for Don Philip to pass to Austria on the extinction of his male descendants.

Ferdinand VI, spoken of as weak and obstinate, had the blessed courage to keep the country at peace. He refused to be drawn into the Seven Years' war, and for the thirteen years of his reign he allowed his subjects exemption from the horrors of war. The reign of this monarch also witnessed a marked reaction against the papal power. In 1753 he asserted his right to appoint to all important benefices, and of the 12,000, which the Pope had filled before, Ferdinand left



only fifty-two. He next issued an edict that henceforth papal bulls should not be obeyed till they had received the royal sanction. Charles III, who came to the throne in 1759, continued the work by driving out the Jesuits, restricting the extension of church lands, and moderating the cruelties of the Inquisition. At the time of the American revolution Spain joined with France against England, and on the conclusion of peace gained Minorca and Florida. This reign was one of material progress. The ministers sought to restore prosperity by the encouragement and protection of industry and trade. By a most commendable ordinance issued in 1773 an effort was made to remove the Castilian prejudice against trade by declaring that no loss of rank or privilege should be occasioned by engaging in industrial occupations. Agriculture was stimulated by the construction of roads and canals, and by removing the restriction on inclosures, that had been imposed at the instance of the owners of the great flocks of sheep which overran the country and destroyed all cultivated crops. Charles III died and Charles IV came to the throne at the outbreak of the French revolution. A Bourbon king could not sympathize with a demand for popular rights, and the policy of the Spanish monarch was reactionary and directed to strengthening the despotism. Spain joined the first coalition against France and sustained crushing defeats in the campaigns of 1793 and 1794, due mainly to inefficient organization and want of supplies. This was followed by a treaty of peace which bound Spain in an alliance with France against England. In 1800 Spain ceded Louisiana to France and agreed to aid her in all her wars, and in 1801 invaded Portugal at the call of Napoleon. In the struggle with England the Spanish fleet was destroyed and the prestige of the former nation at sea firmly established, but French influence still dominated, and in 1808 Napoleon caused Charles IV to abdicate and placed his brother Joseph on the throne. A popular uprising was temporarily successful and entrusted the government to a junta of thirty-four, to rule in the name of Ferdinand, but Napoleon soon scattered their army and restored his brother to power. The national party made Cadiz

its capital, and in 1810 the cortes assembled there. In 1812 it promulgated a constitution providing for a limited monarchy with all legislative power in the hands of a single national assembly.

With the aid of the English under Wellington the French were driven out of Spain in 1813, and in the next year Ferdinand VII returned to Madrid and assumed authority. He set aside the liberal constitution, restored the nobles and the monasteries to their privileges and exemptions from taxation, allowed the Jesuits to return and the Inquisition to resume operations. A tyrannical and profligate court and bigoted clergy again combined to crush all liberal sentiment. In 1819 the sale of Florida to the United States, the revolt of the Spanish colonies in America and the ill success of the government in its efforts to reduce them to obedience, caused great popular discontent throughout Spain. In 1820 a revolt started at Cadiz, which rapidly spread over the whole country. The king accepted the constitution of 1812, dismissed his ministers and put liberals in their places. The cortes met and proceeded to abolish the monasteries, the Inquisition, the clerical titles and entails of landed estates, and to pass laws to secure freedom of the press and of public meetings. This was distasteful to the monarchs of Europe, and in 1823, at the dictation of the Holy Alliance through a congress at Verona held by France, Austria, Russia and Prussia, a French army invaded Spain and restored despotic power to Ferdinand.

In 1829 Ferdinand issued an edict abolishing the Salic law, which excluded females from succession to the throne. In 1833 he died, and his infant daughter Isabella was proclaimed queen with her mother as regent. Ferdinand's brother, Don Carlos, claimed the crown under the Salic law and drew to his aid the supporters of absolutism. Christiana was supported by the liberals and granted a constitution establishing two legislative chambers chosen by indirect election. This was not satisfactory to the liberals, and in 1836 the constitution of 1812 was revived. By 1839 the Carlists were subdued. In 1843, after temporary ascendancy of the radicals, which had caused Christiana to withdraw to France and the selection of

Espertero as regent by the cortes, Isabella became of age and was recognized as queen. The history of her reign is one of court intrigue, with the reactionary party in the ascendancy most of the time. Married to a cousin, who was believed to be an imbecile, though not really quite so, she had piety without morality, and the Spanish nation had to bear the shame of a notoriously licentious woman as its queen; fat, coarse and indolent, she yet was good natured, generous and kind hearted. She even delighted in granting pardons, to which Spanish monarchs generally showed great aversion. In 1854 there was a popular uprising with rioting at Madrid, resulting in the appointment of a liberal ministry, whose purposes were expressed in a proclamation stating: "We desire the preservation of the throne, but without the *carmarilla* which dishonors it; the rigorous enforcement of the fundamental laws, improving them, especially those of elections and the press; a diminution of taxation founded on strict economy, and also respect to seigniority and merit in the military and naval services. We desire to give the towns the local independence necessary to preserve and to increase their own interests, and as a guarantee of these things we desire a national militia."

In 1866 Isabella recalled her old ministers, the most prominent liberals were driven into exile and the cortes dissolved. In 1868 another revolt occurred which caused Isabella to go to France. A cortes was summoned and met in 1869, which adopted a new constitution providing for a limited monarchy. It substituted the principle that the sovereign power was derived from the people for the doctrine of divine right of kings, granted religious liberty and provided for a Council of State, a Senate and House of Representatives. A regent was chosen to hold pending the choice of a king. In Nov. 1870 Amadeo of Savoy was chosen by the cortes, but he left the country, which he could not successfully govern, in Feb. 1873. Thereupon the cortes proclaimed a republic. War with the Carlists followed without very decisive results. The republic lacked vigor, and on the last day of 1874 Alfonso XII, son of Isabella II, was proclaimed king and acknowledged by the army. There had been five changes of ministry in less than two years

with much modification of the theory of government, the last being a virtual dictatorship. The Carlists continued the fight for a short time, when Don Carlos gave up the struggle and left the country. Under the reign of Alfonso XII as a constitutional monarch Spain enjoyed peace till his death in 1885. After his death a son was born, who came to the throne as Alfonso XIII. His mother ruled as regent through his minority, during which time Spain was forced by the United States to relinquish its claims to Cuba, Porto Rico and the Philippine Islands.

Shorn of its foreign possessions, it does not necessarily follow that the people have to face more unfavorable conditions. On the contrary there are evidences already that the statesmen of Spain are beginning to grasp the true basis of national greatness. Proud, indolent grandees, who refuse to do anything useful and squander the resources of the country in ostentatious living, are a curse and nothing more to any country. Those of Spain have for many centuries been advanced types of worthless nobles. Though popular government was not unknown in many of the districts of Spain, and the people of Aragon, Catalonia, the Basque provinces and the large cities, have exhibited a disposition and capacity for preserving popular liberty, the composition of society throughout the nation seems to be such as to still invite abuses in the administration of public affairs. The grand lack in Spain, as everywhere else on the face of the earth, is of knowledge, social virtue and morality. The people are more generally illiterate than elsewhere in Europe, though under the Arabs their schools were probably the best then in existence. Primary education has been compulsory by law since 1857, but only a small portion of the population can read and write; about twenty-five per cent. Progress is being made, however, and the time is probably not far distant when the Spanish people will take the rank to which they are entitled, and which in past generations was not inferior to any others in Europe.

By the fundamental law of June 30, 1878 the monarchy is hereditary, and the king becomes of age at sixteen. He is grand master of the eight orders of knighthood. He exercises

the legislative power in conjunction with the cortes, which is composed of a senate and a chamber of deputies. The senate is made up of three orders: 1. Members by right of birth, princes, rich nobles and the highest state officials. 2. Members nominated by the king for life. 3. Members elected by the state corporations and chief tax payers for a term of five years. The number of the first two classes must not exceed one hundred and eighty, and there may be as many of the third. The chamber of deputies consists of one deputy for every 50,000 population, elected for five years, by electors twenty-five years of age, who have paid a land tax of twenty-five *pesetas* for one year or an industrial tax of fifty *pesetas* for two years. There are eight executive departments, presided over by ministers responsible to the cortes for their acts. In each province there is a civil governor and an elective council chosen by the communes. The system of laws as in most European states is based on the Roman law with local modifications. There is a court of first instance in each of the 501 judicial districts into which the kingdom is divided and a court of second instance in each of the fifteen divisions in which they are grouped, with a supreme court of cassation or review at Madrid. Justice is administered publicly, and parties must be represented by counsel.

On achieving independence from Spain in 1640 Portugal recognized John IV as king. Portugal exhibited substantially the same tendencies toward increased power in the monarch as most European states for the next century, though some great reforms were made, especially in the reign of Joseph, who came to the throne in 1750 and abolished slavery, which had become a great curse to the country. From 1677 to 1828 the cortes never convened. The people of Portugal were profoundly impressed by the French revolution and were involved in the succeeding wars. In 1820 a constituent assembly framed a constitution abolishing the Inquisition and with many radical changes, but this constitution never became fully operative.

In 1826 Pedro IV, who had ruled Brazil under his father succeeded to the throne of Portugal also. He drew up a

charter for a constitutional monarchy and appointed his brother Miguel regent of Portugal. Miguel refused to recognize the constitution and assumed absolute power. Civil war soon followed. The struggle between the reformers and the adherents to the ancient order continued with varying success and more or less violence to the close of the reign of Maria II. Sometimes the constitution was followed, then it was amended, and at other times disregarded, but by the time of the accession of Pedro V in 1855 matters had become fairly settled, and Portugal entered on a more peaceful and prosperous career. In 1852, 1878 and 1895 the charter of 1826 was amended. The monarchy was hereditary, and the king ruled with the advice of a cabinet of seven members chosen by a premier named by the king. The cortes consisted of a House of Peers of ninety members, nominated by the king for life. They were not all titled nobles, nor were all the nobility entitled to seats. The House of Deputies had one hundred and forty-eight members, elected by all male citizens twenty-five years of age or over, who paid above \$1.10 direct tax per year or had an annual income from real estate of \$4.50. By the revolution of 1910 the monarchy was overthrown and a republic established. The religious orders were expelled and their property confiscated. The Council of State was abolished as were also all hereditary titles and privileges. The country is divided into seventeen administrative and twenty-six judicial districts. There are courts of appeals at Lisbon and Oporto and a Supreme Court at Lisbon. There are governors in the administrative districts and elected councillors in each of the 292 *concellos* and in each of the 3960 *freguezias* there is a magistrate elected by the people, with authority corresponding to that of a justice of the peace. Education is compulsory under the law of 1844, which required all children from seven to fifteen years of age to attend a primary school. There is a university at Coimbra and there are at various towns secondary and high schools. The improvement of the system of government and the increased prosperity of the people have followed the work of the schools. The economic, moral and political value of the general diffusion of knowledge among

the people has been shown by the improvements in social and material conditions.

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## CHAPTER XIX

### DENMARK, SWEDEN AND NORWAY

The inhabitants of the Scandinavian peninsula and of the islands and peninsula lying across the water to the south are so closely allied in blood, and their history has been so closely connected, that the development of their institutions will be treated together. That they are closely related to the Germans is evident, though the date of their separation precedes history. Their earliest known organization differed from that of the Germanic tribes in the system of land tenure. The village tenure in common never obtained so far as we are informed. Land was treated as the property of the individual owner. Slavery existed, though the number of slaves was not large. The spirit of the people was distinctly opposed to submission to authority, and the power to manage their affairs remained in the body of freemen. Local affairs were determined in a meeting of the free men of the district, and those of the whole country by a general assembly of freemen, there being no system of representation. Before the advent of written laws the Swedes and Norwegians had their law-men, who were looked to as repositories of the traditions of the law. They recited the laws to the people in their assemblies—*Things*—and were consulted in cases of doubt. The Scandinavians first became known to the balance of Europe from their incursions by sea. They were navigators at an early day, and their enterprises were directed against all the coasts of the continent and British Isles, which they pillaged and laid waste in the most ruthless manner from the Baltic to the Mediterranean. No other country then produced such bold navigators and reckless warriors. They did not engage much in commerce, but were generally pirates and freebooters. At home they were little less fierce. Courage and hardihood were the virtues most regarded, and these seem to have been possessed in an unusual degree even



by the women, some of whom took part in their expeditions. In early times there were petty kings in each district, chosen as leaders by the free men, with little real power over their followers. There was no code of laws, but disputes were determined by combat or by the freemen in their assembly in accordance with ancient customs and advice of their lawmen.<sup>1</sup> Distinctions of wealth and leadership had developed a nobility by the dawn of their history, but without destroying the authority of the freemen assembled in their *things* over all public affairs.

It is said that Gorm the Old, who flourished between 860 and 936, was the first to extend his authority over all Denmark including Schleswig, Holstein, Skania and part of Norway. A little earlier Harold Fairhair had subdued all the petty kings in Norway and placed the *fylkis* or shires under his earls and the *herads*, (subdivision of the *fylkis*), under his *lendermenn*. The date and extent of the domination of the early Swedish kings is so interwoven with the mythical that it is impossible to say much with certainty. Eric, who ruled in the tenth century, is said to have extended his power over Denmark, and his son Olaf, who succeeded him in 993, was the first Christian king of Sweden, having been baptized about A.D. 1000. These were times of almost ceaseless war, and no compact and efficient system of government was established by any of them. The name of Cnut, the Dane, stands out prominently in history because of his conquests in England about 1018. He extended his power over Norway also and into Sweden. Tradition mentions earlier rulers over the Scandinavian races, the greatest of whom was Odin, reputed a Scythian chief, who extended his power from his native land in the Russian steppes to Sweden and Norway, and introduced to the people the religion and institutions of his ancestors. His kingdom is said to have included not only all Denmark, Sweden and Norway but much of the country lying along the line of his march from his native land. There are many points of similarity in the customs of the pagan Scandinavians and those of the ancient Scythians, and there appears good ground for

<sup>1</sup> Continental Legal History Series, Vol. 1, p. 535.

believing that they were carried into the north by Scythian invaders. Odin, the leader seems to have been translated into Odin, the god of warriors, and to have become the principal deity of northern nations. He and Thor, first born son of Odin and Frigga, were the leading deities worshipped, and not only animals but human beings were sacrificed to propitiate them. It was the fashion of northern rulers to trace descent from Odin and to fortify their claims to authority by the superstitious veneration for the supposed gods. Odin is said to have established his power and residence in Sweden about 70 B.C., and the dynasty he established to have continued till 630 A.D. The reigns of Odin and his immediate successors are described in the traditions as peaceful and prosperous and are accepted as a golden age of prosperity. Little can be told with any fair degree of certainty of those early times.

The system of laws prevailing throughout the Scandinavian countries in the time of Cnut imposed fines, definitely fixed for each offense from murder down, graded according to the rank of the injured party. For an injury to the person of a high nobleman the fine was twelve times as much as in case of an ordinary freeman. For theft the fine was generally triple value of the stolen article. The modes of trial allowed the accused to clear himself by the oaths of compurgators, swearing that they believed him innocent. Judicial combat was a recognized mode of trial, as were those by ordeal of fire or water. Trial by jury was also allowed.

On the death of Cnut his dominions were divided between his three sons. The history of the following century is filled with the wars of rival claimants of kingly power. While these claimants fought, Wendish pirates pillaged the people, who for their protection entered into an association for their mutual defense, built ships, manned them and captured many of the pirates. Here was the spectacle of war and discord among princes and an assumption of the function of protecting themselves from external foes by the people. After long and desolating civil war Valdemar overcame his rivals. Prior to his reign all freemen had been permitted to come to the national

council armed, but in his time the clergy and the nobles took away this privilege, and the peasantry of Denmark and Sweden lost most of their political rights.

Valdemar II of Denmark made conquests in the east but was unable to hold them, and the city of Lubec succeeded in freeing itself from his rule. After the loss of much of his foreign possessions Valdemar caused a general survey to be made of his kingdom. The provinces were divided into Episcopal dioceses, which were subdivided into parishes and small districts, from each of which a fixed contribution of men and ships for the defense of the country was required. To remedy the confusion in the law occasioned by the charters of cities, by which they had been granted the right to administer the law in their own courts, the royal guilds, the claims of the clergy of exemption from secular power and the study of the Roman civil law, Valdemar convened in 1240 a national assembly, at which was promulgated what was intended as a code of laws for the whole kingdom, called the Jutland law. By this time feudalism had made its way into Denmark, the local assemblies of freemen were no longer held, but were superseded by the *Adel-Ting* or *Herredag*, an assembly to which only the princes, prelates and nobility were admitted. The peasantry had been generally compelled to place themselves under some feudal lord and thereby lose their independence. The national diet was convened annually at Nyborg. During its recess the government was administered by the king and his council, composed of the leading nobles and officers of the kingdom. The marked change which had occurred consisted in the development of a class of land holding nobles, who shared political power with the king to the exclusion of the great body of the freemen who formerly met in the *Lands Ting*.

On the death of Valdemar II Eric succeeded and fought with his brothers who refused homage for their fiefs, and then led an expedition into Esthonia: on returning from which he was assassinated. Christopher's reign was noted for a controversy with the church, resulting in an interdict against his kingdom for seizure and imprisonment of the bishop of Lund. Eric VII, Gripping, had bloody wars, in which many

of his subjects perished in a contest with the duke of Schleswig and his allies over the possession of the crown, followed by further controversy with the church over the right to control appointments to clerical offices, and was at last murdered in his chamber (1287). During his reign the nobles extorted from him a charter defining their privileges and the limits of royal authority, which thereafter was renewed by succeeding monarchs. He also granted charters to several towns and made general regulations for municipal bodies. Eric VIII warred with Norway, where the murderer of his father received protection, and the controversy with the papal power was renewed. Then followed a barbarous warfare with his younger brother over his right to certain fiefs.

Christopher II on his election by the diet in 1319 was required to sign a declaration; That the bishops and all other members of the Holy Church should freely enjoy their rights and liberties, property and vassals, as formerly, and should be entirely exempted from taxes and the secular jurisdiction: That no ecclesiastical person should be arrested, exiled or deprived of his goods, without the Pope's bull, if a bishop, and if an inferior clerk, only by the regular sentence of his canonical judge: That the chiefs should have feudal jurisdiction over their estates to the extent of amercing in small penalties according to the custom of each province, and that the king should not make war without the advice and consent of the prelate and principal men of the kingdom: That the burghers should enjoy their freedom and not be subject to any new toll or tax without consent of the diet: That the merchants should be repaid the sums borrowed from them by the king or his bailiffs: That no impost should be laid on the free peasantry contrary to the established laws and customs: That a parliament should be held annually at Viborg: That no man should be imprisoned or deprived of life or property without public trial and conviction before the proper courts and with the right of appeal to the highest tribunal: That plundering shipwrecked vessels should be punished: That no law should be enacted except by parliament, and that the king alone, with the advice of the nobles and pre-

lates, should have power to change the above rules. Christopher lavished grants of lands on his favorites. He was rewarded for his generosity with revolts and driven from his kingdom, which he vainly fought to recover and died after fourteen years of turmoil. The king had lost his power. The turbulent feudal lords and the rising towns of the Hanseatic league dominated the country. His death was followed by a period of turmoil. Valdemar IV, who after some delay was elected king, had both civil and foreign wars which brought misery on the people.

During the period we have just considered the course of events in Norway was far from peaceful. Sverre in 1202 after a long struggle took the throne from the youthful Magnus V. Having gained the crown by the sword, he had to fight to keep it. Having incurred the displeasure of the Pope, his kingdom was laid under an interdict. He died after twenty-five years of strife. After three brief reigns came that of Hakon, who also had to fight to maintain his authority. His last important undertaking was a disastrous expedition to Scotland. Magnus VI became king in 1263. He granted charters to Bergen and Trondheim and made regulations for their municipal affairs, trade guilds and fraternities. He also compiled a general code of civil and criminal laws, which was accepted by the people assembled in the *Gula Ting* in 1274. It provided for an annual *Law Ting* at each chief town of the kingdom, presided over by a judge and attended by a panel of jurors. Trial by battle and ordeal had already been abolished, and two witnesses were required to establish a crime. Compurgators were still allowed. The kingdom was again divided, as formerly, into marine districts, each of which was required to furnish its quota of men and ships. Beacon stations were established on the heights, by which signals could be passed from point to point in case of invasion. Erik married the daughter of Alex III of Scotland, and involved his country in a fierce and profitless war with the Danes in defense of the murderers of Eric Gripping. Hakon made war on the king of Sweden to avenge the murder of his son-in-law. As a result Magnus Senek was placed on the Swedish throne and afterward succeeded to that of Norway also.

In Sweden slavery was abolished by King Magnus in 1335. Margaret was chosen their first queen by the Danes and Norwegians. War followed with Albert of Sweden, and he was taken prisoner. In 1397 there was assembled at Calmar delegates from the diets of Denmark, Sweden and Norway, who joined in choosing Eric king of the three countries. Articles of union were agreed on, by which the three countries became united under the same sovereign and his male issue, choice of sons to be made by the representatives of the kingdoms, but each kingdom was to be governed by its own laws. The Hanseatic league, then flourishing, was confirmed in its privileges in the towns of the three kingdoms. Eric entered into war over Schleswig, which at length involved the German emperor and the intervention of the Pope. He made a pilgrimage to the Holy Land, leaving his wife as regent. He had wars with the Hanse towns, which wasted the country and finally resulted in a treaty confirming the commercial privileges of the league. The Swedes rebelled against Eric's misrule and civil war followed, which was terminated through the intercession of the bishops, who this time were peacemakers. Eric provoked revolt and war again ensued, followed by another congress at Calmar, at which the election of a successor to the throne was confided to a college of one hundred and twenty delegates, forty from each state, to include representatives of the prelates, judges, burgomasters and free peasants. Complaints against Eric's rule finally resulted in the choice of Christopher as his successor, and Eric became a pirate.

The peasants of Jutland revolted against the high taxes and oppression of the nobles, but their resistance was overcome in the usual manner. Christopher made unsuccessful war on the Hanse towns. Christian was chosen king by the Danish nobles and then by the Norwegians, but Knutson was named by the Swedes, each acting separately. War followed; Knutson was defeated and driven out and Christian recognized as king of Sweden. Another revolt headed by the archbishop of Upsala again placed Knutson on the throne, from which he was again deposed. On his death Sten Sture received the support of the national diet of Sweden and defeated the Danes in a great

battle. In 1478 the university of Copenhagen was founded and that of Upsala in Sweden soon afterward.

John, having been chosen by the Danes and Norwegians, invaded Sweden to enforce submission there and finally obtained their recognition. In an attempt to subjugate Dethmarschen he met with a signal defeat by the free peasants, in which great numbers of the Danish nobles were killed. Revolts again occurred in Sweden, and his authority was resisted during the balance of his reign. Norway also rebelled but was reduced to submission. In his contests with the Swedes and their allies, the Hanse towns, the war degenerated into pillaging expeditions. The barbarity exhibited was extreme. Christian II came to the throne in 1573. The Swedes resisted his authority, and he called to his aid the clergy and the soldiers. Under the name of authority and religion the grossest barbarities were committed. Having overcome the opposition, partly by force and partly by promise, he was crowned at Stockholm. At the close of the court festivals he seized the leaders who had opposed him, and to whom he had solemnly promised amnesty, and on the demand of a churchman for justice against his enemies he turned them over to an ecclesiastical court for trial. They were condemned the next day, and on the pretense that he as king could not shield them from punishment for heresy, on Nov. 8th, 1520 a great number of the leading men of the kingdom were butchered. The Pope's agent was encouraged in his trade of selling indulgences, from which he realized large sums from all fations.

Gustavus Vasa, son of one of the murdered men, after wandering from place to place took refuge with the poor but free Dalecarlian mountaineers, whom he incited to a revolt which gained in force till with the aid of the Hanseatic League the Danes were driven from Sweden. In Denmark Christian excited the hostility of the nobles by forbidding the sale of serfs and allowing them to change their masters, by prohibiting wreckers from seizing shipwrecked goods and in lieu appointing bailiffs to save and return them to the owners on payment of salvage. The nobles revolted and Christian left the kingdom. Gustavus Vasa was then elected to the throne of Sweden by the diet and became the founder of a famous dynasty.

Frederick succeeded to the thrones of Denmark and Norway. After a time the dethroned Christian succeeded in raising a revolt in Norway and involving the people in war, but he was taken prisoner and spent the next twelve years of his life in a dungeon of the castle of Sonderborg, and then was removed to that of Kallundborg. Christian III came to the Danish and Norweigan throne in 1533. The reformation took early hold in Denmark, and religious strife, revolts of the peasantry and many other internal disorders occurred. Christian adopted the reformed faith, took away all temporal power from the clergy and confiscated the church property. The blow at the clergy was accompanied by a confirmation of the privileges of the lay nobility. Sweden also threw off its submission to the sway of the clergy and took side with Luther. Under Gustavus Vasa Sweden enjoyed a degree of peace and prosperity it had not known for many generations. He died in 1560 and was succeeded by Eric his son. His rule was in striking contrast to that of his father. He was fickle, wasteful and plunged into needless wars at home and abroad, from which the people suffered more than the usual miseries. At last they rose, deposed him and elected John in his place in 1568, who had war with Denmark and with Russia, from which no good resulted. Frederick II of Denmark made cruel war on the valiant Dithmarschen peasants, whom he attacked with an overwhelming force and ruthlessly slaughtered. Then followed long and wasting war with Sweden, the pretext for which was the wearing by the Danish monarch in his coat of arms of the triple crown, implying sovereignty over Sweden, the independence of which had been established. The war ended with the loss of his crown by Eric of Sweden. The peace negotiated with King John did not last and more fighting followed till, weary of war, a new treaty was made. Frederick was a Lutheran and persecuted all of other faiths with the zeal and intolerance which characterized the times. Sigmund, son of John of Sweden, having been chosen King of Poland, succeeded on the death of his father to that of Sweden. He was a Catholic and his subjects Protestants. Duke Charles, son of Gustavus Vasa, was made regent. Religious



differences resulted in civil war. Sigmund was deposed and Charles made king.

Christian IV ascended the Danish throne at the age of twelve. After reaching his majority he took an active interest in promoting good government, especially in Norway, and made a voyage around the north cape into the White Sea. Then disputes with Charles of Sweden and war followed, which was continued after the death of Charles by his son, Gustavus Adolphus. After great suffering by both parties a peace was concluded. Gustavus waged successful war against Poland, in which he gained great glory and great numbers of his people lost their lives. At a meeting of the Saxon states at Lauenburg in 1625, while the Thirty Years' war was in progress, Gustavus was chosen captain general of the confederate army of Danes, Germans, Scotch, English and Swedes. His brilliant career in that memorable war ended with his life in 1632 on the hard fought field of Lutzen. As a result of this war the power and territory of Sweden were greatly increased, though at a fearful cost of life and property to the people.

In Denmark power and landed property had steadily centered in the hands of a few, till the national assembly was no longer convened, and a few great lords dominated in the councils of the state. In 1660 Frederick convened the national diet, to which the nobles, the clergy and deputies from the towns were summoned, but there was no longer a free peasantry to be called. Norway was not called on for representatives. At this diet the crown was made hereditary, and the king absolved from the ancient limitations of his authority in favor of the nobility. The great lords were forced to swear fealty to the hereditary and unlimited monarch. This was one of the most remarkable revolutions in history and completely changed the character of the Danish government, from one in which each king had been forced at his accession to power to swear to observe the very extensive privileges of the nobility, leaving him little more than a nominal ruler, to an absolute monarchy in which the king engrossed all executive, legislative and judicial powers and was raised above the law, save that the order of succession to the throne, which the king was authorized to

establish, could not thereafter be changed. This gave to the king power to crush the great nobles, whose counsel he was no longer required to take, and to fill all offices with persons of his own selection, devoted to his interests. The motive for the change influencing the clergy and lower orders in the diet was to obtain relief from the tyranny of the oligarchy, who were exempt from public burdens while owning a great share of the land. The union of the multitude in support of a single head of the state in order to overthrow an obnoxious oligarchy is not unprecedented, but no other instance is recalled where absolute hereditary power has been deliberately conferred in a time of peace. Christian V, soon after coming to the Danish throne, took advantage of the war in which Charles XI of Sweden had engaged with the elector of Brandenburg to attack the now most dreaded foe of Denmark. The Danes and their allies were at first successful by sea and land, but the youthful Charles at last took the field and defeated them. After many battles with varying fortunes a peace was concluded, which left both parties with the same possessions as at the beginning of the war.

In Sweden Charles convoked a diet in 1680 for the purpose of remodeling the government, as a result of which a new board, called the Grand Commission, was established with power to inquire into the transactions of the ministers and punish the usurpations of the senators. Steps were also taken to recover grants of royal domains from the great nobles, to whom they had passed by grant or mortgage, on repayment of the original price paid the crown for them. Another diet, convened the following year, gave the king authority to change the constitution. This change was promoted by the same influences as those which changed the Danish constitution. In 1693 an act was passed which in terms made the king absolute and authorized him to govern the realm according to his will and pleasure without being accountable to any earthly power.

Charles XII, 1697, was a minor of fifteen years at his father's death, but notwithstanding the will of his father, which extended his minority to eighteen, in six months he assumed the exercise of the unlimited kingly powers. He was

soon involved in war with a combination formed by Denmark, Saxony and Prussia. He met this formidable array with such marvelous courage, energy and success, as to challenge the admiration of all Europe and raise him to the first rank of military heroes. Not waiting for the allies to combine their forces, he at once assumed the offensive, attacked and crushed Denmark first, then sailed over the Baltic, landed at Pernau on the Gulf of Riga, attacked the poorly equipped and undisciplined Russians and destroyed army after army, far exceeding his own in numbers. Having disposed of the Russian armies, he turned upon the Saxons and passing through Lithuania he entered Poland, took Warsaw and Cracow, deposed the Saxon Augustus and caused the election of Stanislaus in his place. Thence he marched into Saxony and the imperial domains. Augustus was forced to sue for peace and make such terms as the victorious Charles saw fit to impose. These required the renunciation of the crown of Poland and the abrogation of his treaty with the Czar. After resting a while in Saxony, during which he drilled and perfected his army, Charles entered on the task of invading Russia and overthrowing the Czar. Peter had not been idle, but had profited by the bitter experience of former defeats and devoted his attention to the improvement of his army. Charles advanced but encountered stubborn resistance and an exceptionally severe Russian winter. Instead of pushing on toward Moscow, he turned to the south and passed through the Ukraine to join forces with the Cossack chief, Mazeppa, whom he expected to join him with a force of 30,000. Instead of Cossacks he was met by Russians. After suffering heavy losses from the severity of the weather and the want of supplies, as well as from frequent engagements, in the summer of 1709 he again attempted to force his way to Moscow with the remnant of his once splendid army. Peter met him at Pultowa on July 8 with 70,000 men, and, though he fought obstinately, overwhelming numbers decided the day and the Swede's army was destroyed. With a small band of horsemen Charles made his escape into the Turkish domains, where he remained, supported by an allowance from the sultan, whom he sought to induce to raise an army with

which to renew the contest. Having played the rôle of a most troublesome guest to the Turks till Oct. 1714, Charles, in company with only two officers, started back to the north, reaching Stralsund safely on Nov. 21. He was most enthusiastically received by the army, but his presence was not sufficient to enable the small Swedish garrison to resist the combined besieging army of Danes and Prussians. He succeeded in escaping in a boat, just as the town capitulated, and made his way across the Baltic into Sweden. Still bent on conquest, he raised a new army, with which he invaded Norway. On his second invasion of that country at the siege of Fredrickhall on Dec. 11, 1718, he was struck by a ball and killed. The career of Charles affords a striking example of the misfortune it is to a kingdom to have a great military hero for a king. It also illustrates the strange infatuation, which causes the multitude to applaud and follow a leader who marches them to destruction, so long as he succeeds in gaining battles and inflicting greater misery on his enemies than his own troops suffer. Had Charles been content to make peace after his early wars, which though carried on in the enemies' country were really defensive, he might have claimed to be a protector of his people, but his insane thirst for conquest caused him to drain his country of men, to be killed or maimed in war or sold into slavery as prisoners. His early campaigns brought booty and wealth, but loss, disaster and poverty alone resulted from the later ones. The great mass of men who followed him to his wars never returned but met death or slavery. The people at home endured the misery of the loss of friends, the sharp pinch of poverty and distress resulting from the destruction of war. Like the barbarous idol worshippers, the Swedes continued to worship their hero and to furnish him victims by tens of thousands. Rejoicing in the early days of success in the destruction and misery he and his followers caused others, they at last felt a full measure of it themselves. This is in the very nature of war, yet savage man still worships the war god in Christian churches, as well as in pagan grove or temple, and still immolates on his altar the bravest and strongest of the youths, leaving the perpetuation of the race to those physi-

cally weaker and less courageous. By this system the race of the peaceful, though weak and defective, is preserved and propagated, while the more warlike element is destroyed.

Ulrica, younger sister of Charles, was chosen by the states to be his successor, but she was required to renounce all claims to despotic power and all hereditary right to the crown. A new constitution in forty articles was framed, which provided among other things; that all offices of trust or profit should be filled by the native nobility; that all taxes should be approved by the assembly; that the senate should manage public affairs in the absence of the sovereign and in case of a vacancy, and that cities and towns were to be confirmed in their corporate rights. This constitution was accepted by the queen. The policy of the new reign was to make peace, and this after some delay was accomplished, but with large concessions of territory to Russia. Ulrica soon abdicated and asked the election of her husband Frederick in her stead. This was done in 1720 with a further extension of the guarantees of the constitution. The king might propose laws, but the legislative power was vested in the states. Sweden enjoyed the blessings of peace till 1741, when bad counsel prevailed in the diet, and war was again declared against Russia. In the campaign which followed the advantage was with the Russians, and the Swedes lost Finland as the price of peace. For blood and treasure wasted there was no return but humiliation.

In Frederick IV, Christian VI and Frederick V, Denmark found peaceful rulers, who devoted their energies to the improvement of the condition of their subjects, but were yet without power, and perhaps lacking in disposition, to do justice to the peasants and poor, who still submitted to the grinding oppression of the nobles.

Sweden again became involved in war with Frederick of Prussia, 1755 to 1762, but the drain of men and resources was not so severe as in her former greater struggles. Gustavus III ascended the throne of Sweden in 1771. He delayed his coronation until he could make sure of the fidelity of the soldiers, when he threw off the mask and refused to recognize the constitution, under which his predecessor had been sub-

jected to the dictation of the nobility, and assumed dictatorial power. The diet was summoned, and with the army at his back Gustavus dictated terms to them and required the members to swear to support his constitution, which contained fifty-seven articles and placed all executive power in the king. The diet was still retained, composed of the four orders, but the king ceased to be dependent on its will.

Christian VII, a weak, narrow minded, dissolute son of a very worthy man, who had been a good king, came to the Danish throne in 1766. His accession was but another illustration of the evil of transmitting power by inheritance, and of the certainty that good men will sometimes have bad sons. Christian traveled abroad and brought home favorites, chief among whom was Struensee, whom the king found practising medicine at Altona and took into such favor that he soon appointed him prime minister. His success in also gaining the confidence of the young queen led to his destruction. He was arrested and tried, if a proceeding before a commission of his bitter enemies who instigated the prosecution can be dignified by that name, and condemned to death, which was inflicted in 1772. From this time till 1784, when the king's son Frederick was associated with him and became the actual ruler, the queen dowager administered the government, though in Christian's name. The young prince displayed unexpected talents and virtues. Through the stormy period of the French revolution and the ensuing wars he succeeded in maintaining peace till 1801, when, having joined Russia and Sweden in an alliance to protect their commerce on the seas against searches and seizures by Great Britain, the Danish fleet was defeated before Copenhagen with heavy loss of men and ships. This defeat was followed by a disruption of the coalition and a change of policy hostile to France. In Sweden Gustavus III proceeded to rule without summoning the diet, till impelled to do so in 1772 in consequence of a memorial of the nobles. He merely made them a speech and dissolved the diet. In 1787 he joined the Turks in waging war on Russia, but officers and men refused to go out of the kingdom to wage an offensive war, which the national diet had not sanctioned, and his expedition

into Finland failed. The diet was afterward convened, and Gustavus proposed a change in the constitution, conferring on the king the power to declare war and make peace. To this the clergy, burghers and peasant orders assented, but the nobles opposed it. Thereupon Gustavus caused the arrest of the refractory nobles, recognized Levenhaupt, president of the nobility, as authorized to give assent on their behalf, and he having affixed his signature to the act, it was treated as duly concurred in by all the orders. The king then abolished the senate and in its place appointed a council divided into two departments, one composed of six nobles and six commoners constituted the supreme judicial tribunal, the other of eight nobles and four commoners had cognizance of minor matters. The war with Russia was resumed and several bloody battles followed, but on the conclusion of peace in 1790, each party was left with the same territory as before the war. Neither party had gained, but both had suffered from the struggle. With a view to obtain supplies for an invasion of France, Gustavus summoned a diet to meet in 1792 at Gefle on the Gulf of Bothnia. With a sufficient military force to overawe all opposition he succeeded in obtaining what an exhausted country could furnish. Shortly thereafter he was assassinated at a masked ball. His brother became regent and ruled in peace during the minority of his son, who mounted the throne as Gustavus IV. Gustavus conceived a bitter hostility to Napoleon, early joined the British in the coalition against him and persisted in his warlike attitude when Russia and Prussia had concluded peace. His obstinacy carried him so far as to cause a rupture with Russia and Denmark. He attempted an invasion of Norway but was driven out and in 1809 was deposed. Charles XIII concluded peace with Russia, abandoning all Finland. In 1810 the French Marshal Bernadotte was named as successor to the Swedish throne, and in 1813 he started with 20,000 Swedes to join the allies against Napoleon and his ally Denmark and compelled the latter to cede Norway to Sweden. He then invaded Norway and forced the unwilling people to submit to Swedish authority. The Danes, having been on the losing side, were forced to submit to the permanent loss of

Norway and ceased to be a prominent power. The duchies of Schleswig and Holstein at all times occupied a relation to the Danish crown different from that of other provinces and had been the cause of many wars. In 1848 there was war with Prussia over these duchies, and the peace of 1850 confirmed the possession of Denmark, but in 1864 they were taken from the Danes by the combined forces of Austria and Prussia and thereafter retained by Prussia.

The modern constitution of Denmark was drawn up by an assembly elected for that purpose in 1849 and ratified by King Frederick VII in 1850. It provided for a diet of two houses, both elective. The first, called the *Folksting*, deals with the budget and general affairs, and is composed of one member for every 16,000 people, elected for a term of three years. The second chamber, called the *Landsting*, under the revision of 1866 consists of sixty-six members, twelve of whom are named by the king, and the others are elected for terms of eight years by districts. Its functions are confined to local matters. The king is the executive head and is assisted by a privy council. In its educational system Denmark takes high rank. It is directed by a royal commission, composed of a president and four assessors, who appoint the professors at the university of Copenhagen and all teachers of grammar schools. Attendance at the schools is compulsory, and nearly all can read and write. Lutheran is the religion of State and confirmation is compulsory. Denmark is still afflicted with class distinctions and an hereditary aristocracy with an undue share of wealth and exemption from taxes and burdens. The perpetuation of the aristocratic class is fortified by the law of primogeniture, and other traces of the feudal system still abide there. On the whole, however, Denmark has gained far more in the last century from a more useful government than it did from a more powerful one in former years.

The union of Norway and Sweden was recognized by the congress of Vienna in 1814 and maintained till the peaceful separation in 1905. Since the fall of Napoleon, Sweden and Norway, so long given over to almost ceaseless warfare, have enjoyed a long period of peace and growing prosperity. The



two countries were united under one king in accordance with the *Riksact* of 1815, which left each free from the other as to all internal affairs, their foreign relations only being joint; both being under the same king, as executive head, and bound to defend each other in case of war. Bernadotte ruled Sweden and Norway under the style of Charles XIV from 1818 till 1844. He devoted much of his energy to internal improvements and those useful duties, which tend to the comfort and happiness of the people instead of their destruction. No material change was effected in the internal constitution of Sweden, either on its union with Norway or during his reign. In 1866 the constitution was amended and a diet established, consisting of two chambers, one elected for nine years by the provincial assemblies and towns, and the other for three years by vote of all natives possessing the required property qualification. The executive power is vested in the king, acting under the advice of a council of ministers, who are responsible to the diet. Legislation may be initiated either by the king or the diet, but must be concurred in by both. The council of state consists of ten members, seven of whom are respectively the heads of the several departments of justice, foreign affairs, army, navy, internal affairs, finance and ecclesiastical and school affairs. The *Riksdag* annually appoints a board to examine the record of the proceedings of the council and with power to indict them before the *Rikratt*. The *Riksdag* meets annually. To be eligible to the upper house a person must be thirty-five years old, own land worth 80,000 crowns or have paid taxes on an annual income of 1000 crowns. Members of the upper house serve without pay, but members of the lower house receive 1200 crowns per year, and are chosen by voters possessed of a property qualification of the value of 1000 crowns or farm lands worth 6000 crowns, or who pay taxes on an income of 800 crowns. All electors are eligible to the lower house. Sweden is divided into twenty-four counties with representative local governments, which levy local taxes and regulate local affairs. The judicial system consists of courts of three grades. 1. The *häradsrätter* consisting of a judge and seven to twelve assessors elected by the people, in

which the assessors, if unanimous, may decide contrary to the opinion of the judge. In the towns there are *radhusratter*, boards of magistrates. 2. Three *hofratter* (higher courts) in Stockholm, Jonkoping and Christianstad and 3. the Supreme Royal Court, two members of which attend sessions of the council when questions of law are settled. Jury trials are not allowed except in cases relating to the liberty of the press. The educational system is of a high order. Attendance of the schools is compulsory. The universities of Upsala and Lund are flourishing institutions of high rank.

On the acceptance of the union of Norway with Sweden by the *Storthing*, the Norwegian representative assembly, the king sanctioned the constitution made at Eidwald on May 17, 1814, and promised that no change in it should be made without the consent of the *Storthing*. The fundamental law of Norway consists of 112 articles and made it an hereditary constitutional monarchy with the same king and the same rules of succession as those of Sweden. The constitution required the king to take the following oath before the *Storthing*: "I promise and depose that I will govern the kingdom of Norway conformable to its constitution and laws, so help me God and His holy writ." The cabinet is to consist of Norwegians only, who "shall carry on the government in the name and on behalf of the king," three of whom shall constantly attend the king while in Sweden. The ministry are accountable to the *Storthing*. The organization of the *Storthing* is peculiar. It is divided into two bodies, a *Lagting* and an *Odelsting*. The members of both are elected by districts merely as members of the *Storthing*, and the whole body selects from its members one-fourth its number, who constitute the *Lagting*, the other three fourths constituting the *Odelsting*. All bills are first introduced in the *Odelsting* by a member or a minister. If passed, a bill goes to the *Lagting*, which may concur or reject it. In case of a rejection by the *Lagting* it is again considered and if again passed with or without amendments it is once more submitted to the *Lagting*. If then rejected it is considered by the whole *Storthing*, sitting as one body, a two third vote being required to pass it. When passed the act went to the king,

who signed if he approved it, and suspended if he disapproved. If a bill had been passed without amendment by three regular *Storthings* elected successively, during sessions separated by at least two intervening regular sessions, it became a law without the king's sanction. Appropriation bills were not subject to the king's veto.

The democratic character of the *Storthing* was well tested, when the hereditary nobility was abolished by an act proposed in 1815 and finally passed in 1824 under the provisions of the constitution, without the king's sanction and over his opposition and repeated objection. The people of Norway escaped the blight of the feudal system. The peasants have always been free, and their tenure of land has been that of absolute owners. The lowest court in Norway is that of mutual agreements, held once a month in every parish by a commissioner elected by the householders. Next is the *sorenskriver* which sits quarterly and has jurisdiction of both civil and criminal causes. The entire kingdom is divided into four provinces, eighteen amts, sixty-four *sorenskriveries* and forty-four *fogderies*. The *stifts-amt* court consists of three judges with assessors, who are stationary in the chief towns in each of the four grand divisions, and review the action of inferior courts. All cases may be carried by appeal to the *Hoieste Ret* at Christiania. A judge is liable in damages for a wrong decision. The system of electing members of the *Storthing* is peculiar, in that the voters choose electors who meet in each county and name the members. A low property qualification is required or a public appointment to qualify a voter.

Norway has a good school system, ranging from generally attended primary schools, middle and high schools to the university at Christiania. The Norwegian of to-day, as his ancestor the viking, still sails the sea, and considering the number of people in the country, Norway plays a very prominent part in the carrying trade and foreign commerce of the world. Her people are no longer the dread and terror of the seas, but honest, peaceful toilers, faithfully doing their part of the useful labors, yet preserving their old love of liberty and retaining an essentially democratic state.

In 1905, owing to the refusal of the King to accede to the demands of Norway with reference to the foreign consular service, the relations of the two countries were severed peacefully. King Oscar relinquished the crown of Norway on October 27, and on November 18 Charles of Denmark was elected king of Norway and took the name of Hakon VII.

In 1907 parliamentary suffrage was given to unmarried women over twenty-five years of age who pay taxes on incomes of 300 kroner in the country or 400 in town and to married women whose husbands pay taxes on like incomes.

## CHAPTER XX

### GERMANY, AUSTRIA, HUNGARY AND POLAND

The characteristics of the early German society have been briefly mentioned in Chapter II. The mass of the people were freemen, who bore arms and held as slaves prisoners of war and those condemned to slavery for crime. Important affairs were decided in assemblies of the tribe, and the authority of the nobles was temporary and largely dependent on the will of the freemen. Lands were owned in common and periodically distributed. Each village chose its own chief, and the heads of the hundreds and tribes were also elected by the freemen. The chiefs were accustomed to gather a personal following around them, which became the nucleus of military power and the starting point of established authority. In war the whole body of freemen constituted the army and went out to battle. When large numbers combined they chose their *herzog*. The Romans came in contact with the Cimbri and Teutons about 100 B.C. In numerous conflicts with various tribes thereafter they invariably found them strong and brave. In A.D. 6 Arminius formed a confederacy of such power that he was able to fall upon Varus and utterly destroy his legions. The Romans succeeded in establishing their authority over most of Austria, Hungary and along the Rhine, but were never able to extend their rule over interior and northern Germany. With increase in numbers and advancement in capacity for organization the Germans in turn drove the Romans out and invaded the Roman provinces. The Marcomanni formed a powerful league, which the Romans under Marcus Aurelius fought through successive campaigns. In the fourth century the Goths founded a great kingdom, extending across the continent from the Baltic to the Black Sea. This was broken up by the Huns, who poured in over the Russian steppes from Asia. Under pressure from this invasion the Burgundians,

Vandals and Suevi moved westward, the first named taking the valley of the Rhone, the Vandals passing on through Gaul and Spain into Africa and the Suevi establishing themselves in Spain. The Goths under Alaric invaded Italy, seized Rome, and spread over Gaul and Spain. The Lombards also pushed southward and succeeded the Goths in the mastery of Italy. The Avars from the east established themselves in Hungary. Though these and other tribes played a most important part in the dismemberment of the Roman empire and established their authority over large districts, the most important advances toward the organization of a great German state were first made by the Franks, who dwelt along the lower Rhine. They lived in close contact with the Romans of Gaul, with whom they were comparatively friendly and from whom they borrowed notions of government. By the middle of the fifth century the Salian Franks, who dwelt about the mouth of the Rhine and along the shore of the North Sea, had an hereditary king, who ruled over a state divided into *gaue* governed by *grafen* appointed by the king. There were no nobles but the officials and immediate followers of the king. The popular assemblies of freemen were however still the source of authority and determined all matters of great concern. Under Clovis, 481 to 511, the kingdom was extended both east and west.

In the Germanic portion of the kingdom authority was delegated to favorites, as *grafen* in the counties and *herzogen* over larger districts, to whom were given large tracts of land. While the kings increased the measure of their authority in the western portion of their dominions and gradually ceased to consult with the freemen of the nation, in the east the assemblies of the tribes and hundreds were still held, and the authority of the king and his officers was kept in check. Through the ownership of land and the retainers by whom they were surrounded, the *grafen* and *herzogen* gradually extended their power over the freemen and shook off the restraints of the king, till under the impotent Merovings all real authority was in their hands.

Under the more vigorous sway of the mayors of the palace,

Pepin and Charles Martel, the central power was restored to some extent, and under Charlemagne a more thorough and efficient system was established. The authority of the Merovings was never established over the whole of Germany. The Saxons and many others repeatedly repudiated it. They preserved their free tribal system and refused to accept Christianity down to the time of Charlemagne. The Saxons refused to confer on their chiefs authority to bind them by treaties. No central authority capable of speaking for all the tribes existed. The Bavarians also retained much of the same independence.

Charlemagne extended his general system over Germany. Over the border counties he placed Margraves, who administered justice in his name, collected tribute and commanded the border forces. Over the interior counties he placed *grafes*, who decided causes in accordance with local customs and the general code. Four times each year each district was visited by his messengers, who reported to him and carried his commands. He also founded schools in connection with the churches and monasteries. Under his rule, however, the liberties of the freemen were curtailed, and their great assemblies no longer held. The nobles only were consulted, and their advice was followed when it suited him. The matters which had before been decided by the assemblies of freemen were determined by his appointees, and all popular gatherings were discouraged. The burdens of his many wars fell heavily on the people, who were often compelled to serve in distant parts to their financial ruin as well as risk of life. From all on whom he conferred lands, Charles exacted an oath of fealty, he also required all his prelates, counts and many great landowners, whose titles were not received as benefices from him, to take a like oath.

The feudal system developed as an accompaniment of the empire of the Franks. Its essence was rulership through a theory of land tenure, by which the relations of the different orders of society were based on their interest in or relation to the soil. The ancient Germans had not reached the conception of absolute title to land. They regulated occupancy in

severalty for from one to three years by the freemen of the tribe, but did not entertain the artificial notion of a title which continued through all time as an absolute property, even of the tribes. The Romans made no distinction in theory between title to land and to cattle and slaves employed in tillage. The feudal system came with the seizure of the lands of the Romans and others in Gaul by the invading Franks. Dominion over the land and the conquered people were acquired contemporaneously, and in granting local jurisdiction and mastery, whether as a mere landowner or as an agent of the sovereign power, Charlemagne exacted an oath of fealty. The high regard in which the authority of the church had come to be held and the fearful consequences, spiritual and temporal, which were believed to result from a violated oath, gave to the form of swearing fealty a force and value deemed of first importance. The object of the kings in parcelling out the land among feudatories was to secure their own dominion by the military service which their vassals were bound to furnish. The counts and Margraves appointed by Charlemagne under his vigorous rule obeyed his commands and carried out his policy, but under his weak successors the feudal system developed power in the local lord, who became a despot over those beneath him, a jealous and contentious neighbor to his equals and a haughty and often rebellious vassal of the king. On his own estate the feudal lord administered what had to pass for justice. The actual tillers of the soil were without protection as against him. The practice of building strong castles, within which the barons defied all authority and from which they issued to rob the passing merchant or to wage war on some neighbor, nowhere gained more ample development than along the Rhine, Danube and throughout Germany. Not all of the lands of Germany were held by feudal tenure. The village system prevailed largely in the south, and peasant communities with lands in common have survived in various parts to the present day. It would be a tedious and perhaps profitless task to trace the endless wars for succession to power and the ever changing frontiers of the German emperors, who held more or less sway, according to their varying



capacities and the shifting combinations of local rulers with which they were forced to contend. Charlemagne was crowned at Rome by the Pope and held real power in Italy. In 918 Henry, Duke of Saxony, was chosen Emperor and, being a capable and vigorous ruler, extended his authority over the whole German population and in a great battle defeated the Magyars, who were the scourge of Germany at that time. He encouraged the building of towns for the traders, which were made places of defense, and at that early day introduced a check on the tendency of the great lords to draw all the freemen to their support as vassals. The towns steadily developed as centers of industry and trade, and their spirit of independence, which has never disappeared, has profoundly influenced German civilization in all succeeding ages. Probably this development should be attributed more to the genius of the people than to the policy of Henry. At Henry's request the nobles after his death chose his son Otto as his successor. He not only preserved but extended the bounds of the empire. He added Lombardy to his dominions and received the imperial crown from the hands of the Pope. Henceforth the German emperors assumed the title of Roman emperors and claimed to rule the Holy Roman empire, whether receiving the crown from the Pope or not and without regard to the possession of real power in Italy. Otto had to contend with rebellious subjects. The Roman title and efforts to rule Italy proved a source of weakness rather than strength to his successors. The real governing power soon fell into the hands of local potentates holding large estates, or of leaders chosen by the people in contests with the invading Northmen, Magyars and Slavs, against whom the Emperors failed to give protection. We read of dukes of Saxony, Bavaria, Swabia, Lorraine and Franconia, whose power and influence grew as feudal lords. Many unprotected owners of free or allodial lands, being at the mercy of more powerful neighbors, chose to surrender their holdings to a powerful chief and take them back as fiefs under the protection of the feudal lord. The central power was without sufficient vigor to restrain the great lords, who levied war on one another at will. The imperial

power ceased to be recognized as an inheritance after the accession to the throne of Arnuld, the illegitimate son of Carlman: thereafter the Emperors were elected. In 911 Conrad of Franconia was chosen by the nobles under the lead of Otto, duke of Saxony. From that time down to the final separation of Austria and Germany in recent times the office was filled by election, but the number of electors was very limited. It was the choosing of an Emperor by princes who exercised more real power than he. The local rulers under the titles of *graf*, *herzog*, *Margrave*, *landgrave*, king, elector and other designations of lay rulers, and the bishops, archbishops, abbots and other ecclesiastical rulers, were each subjected to restraining influences of varying potency according to times and circumstances. The kings and grand dukes, who acquired authority over considerable districts, were dependent for their military following on their feudatories. The ancient German idea of determining questions of war and peace in assemblies of freemen was never wholly obliterated, although at times and in places disused. Local assemblies of the inferior nobility were often convoked in all parts of Germany, and exercised the power at times of choosing their overlords and of deposing distasteful rulers. Feudalism effected the exclusion from the assemblies of the great mass of the people, but the nobility, of whom Germany has been at all times most prolific, never became accustomed to submit to hereditary arbitrary power.

While in other countries it is possible to trace a governmental system maintained by changing dynasties through long periods of time, in Germany we trace the development of the civilization of a race of people maintaining the possession of their ancient home and often sending out conquering hordes to assume mastery of other lands, but never themselves at any time subjected either to a single foreign ruler or a firmly established government of their own with general power over the whole German people. In the earliest times of which we have any account, free German tribes occupied substantially all of modern Germany, the Netherlands, and Austria. The Romans succeeded in imposing their authority on the southern

and a little of the western part of this territory, but it was always a precarious dominion, and the crumbling of the empire first began where it came in contact with Germans. Except for a brief period while the Romans held Dacia—including modern Hungary—the empire was bounded by the Danube and the Rhine, beyond which the Germanic tribes maintained their freedom and defended their possessions against all comers. They have been attacked from every quarter, from the west in the early days by the Romans and later by the French and Spanish; from the north by their kinsmen the Danes, Swedes and Norwegians; from the east by Poles and Russians in the north and the later swarms from Asia in the south—Huns, Avars, Magyars, Tartars and Turks. In the southeast Goths, classed as of German stock, and Avars, Huns and Turks have established successively their authority over Hungary and part of Austria, but the German stock has never been rooted out, and only in Hungary, where the Magyars became the dominant race, have they been forced to give way and allow an alien people to impose enduring dominion over them. On the other hand the German Franks established their dominion over Gaul. The Goths, Vandals and Suevi overran Spain. Wave after wave of German conquest swept over Italy under the names of Goths, Lombards, Franks and Germans. Even Britain was colonized and mastered by the Angles and Saxons.

The preservation of the German race and the maintenance of its possession of central Europe have not been due to any strong centralized government, nor to harmonious or concerted action of the different states. The system of dividing inheritances equally among males has, during much of the time, been applied to those estates which carried also hereditary rulership, and has resulted in repeated divisions of states among heirs, who frequently fought with each other for the whole. The Franks under the Merovings suffered for centuries from the contests of the heirs of their kings for the inheritance. The rights of rulers great and small were the only rights considered, and the people were constantly called on to give up their lives in the struggles of vicious and cruel

nobles for mastery over the land. Nothing can be more sad and dreary than the records of the bloody struggles brought on by the ambition, malice, cupidity and other evil passions of those invested with authority. If the accounts of wars great and petty, with which the pages of German history are so completely filled, were in fact the records of all that has been done by the princes and rulers, a sweeping judgment, utterly condemning the whole and denying all value in such governments, might safely be pronounced, but war has always been the favorite topic of historians, and the doings of peace are mostly left without other record than their impresses on society and the face of the earth. Most prominent among the characteristics of German society, the good effects of which can be discerned in all periods of history, are the relative purity of domestic life, the respect accorded women and the equal treatment of children. No cruel theory of slavery to a father or husband was ever adopted. Purity and warmth of attachment of husbands and wives to each other and to their children without distinction have in all ages been eminently characteristic of the Germans. Though the Rhine was for centuries infested by its robber barons, and though wrong and robbery abode securely in the castles all over the land, in no country and among no people has there developed a more general and sturdy honesty than among the Germans. The performance of promises and the payment of debts imply industry, without which the ability is wanting. So the German people are noted for industry and thrift. This is especially true of the low countries, Holland and Belgium, where the manufacturing of fabrics and attendant foreign trade early developed. The strength of the German people has been and is moral strength. They have not until very recent times exhibited marked capacity for great combination for military supremacy, but have on countless fields exhibited a tenacity and obstinate courage which has preserved the integrity of their homes, where other people would have been crushed or enslaved. German development has been many sided. Henry III 1039-56 sought to reform the church, which had fallen into great corruption, and in 1046 he entered Rome, deposed

the claimants to the papal throne and placed on it a man of his own selection. In 1075 Gregory III assumed powers never before conceded to the Pope and issued a decree forbidding the clergy to marry and against investiture in clerical offices by laymen. In Germany half the land is said to have been held by the clergy, to whom it had been given by the sovereign, and the principal strength of the emperor was derived from the support of the churchmen attached to his interests by the feudal tie. Henry IV resisted and denied the power of the Pope. In return he was excommunicated and his subjects declared absolved from their allegiance by a papal bull. A long continued struggle, known as the war of the investitures, followed, which did not end till the concordat of Worms, by which as a compromise it was agreed that the right of electing the prelate should be vested in the clergy in the presence of the emperor or his representative, and that he should invest them with the sceptre, and he resigned the right of investing them with ring and staff. With Henry V the Franconian House ended, and Lothair duke of Saxony was chosen. The termination of the Hohenstaufen dynasty found the imperial authority reduced to a shadow. Frederick Barbarossa and his successors expended so much of their time in foreign wars, the crusade and in Italy, that the rulership in Germany was left almost wholly to the local princes. The great duchies were broken up, and the number of lords holding directly from the Emperor had been greatly increased. The imperial cities had developed into free republics. The ruling class in the country consisted of a large number of prelates, dukes, palsgraves, margraves, landgraves and counts, inferior in authority to the Emperor only and denying obedience to him. Beneath these immediate nobles were the mediate feudal barons with their inferior holdings. These looked down upon the simple freemen, who held allodial lands, whom they frequently robbed and oppressed. The great bulk of the population outside the cities consisted of the peasants and serfs, without any share in the government and wholly at the mercy of the nobility. Besides the free imperial cities there were mediate cities, acknowledging the supremacy of the lord of

the district. The election of the emperors, though in fact dictated by a few great princes, in theory required the action of the whole body of nobles who held by a tenure immediate from the Emperor. On the occurrence of the interregnum following the death of Conrad IV in 1254, through the influence of Pope Urban IV the electoral college was definitely constituted of the archbishops of Mentz, Cologne and Treves, the houses of Mittelsbach and Saxony, the Margrave of Brandenburg and the King of Bohemia. Prior to this time the territories governed by the princes were not divided among the heirs, as were private inheritances. This principle was now changed and divisions were made of the principal duchies.

The divisions of the states resulted in that bewildering multitude of petty sovereignties, which baffles all attempt at clear description. Contemporaneous with this splitting of states the free cities evidenced some capacity for organization and combination for the common good. The Rhenish Confederation founded by Mainz and Worms within a year included seventy cities. Even more important was the Hanseatic League, originating with Lubeck and Hamburg, which ultimately took in over eighty cities and became one of the great commercial powers of Europe. In 1273 Rudolph of Hapsburg, a petty Swabian noble, was elected Emperor and obtained the grant of the fiefs of Austria, Styria and Carinthia to his son Albert. In this manner the rule of the Hapsburgs in Austria was inaugurated and thereafter many Hapsburgs were recipients of the imperial title.

In 1356 Charles IV promulgated what is termed the Golden Bull, defining the rights of the imperial electors in certain particulars as to which there had been uncertainty. It had not been settled whether all the princes of each electoral house were entitled to vote, nor by what rule a selection of an elector should be made from different branches of a family. This was definitely settled on the principle of primogeniture and a single vote to each house, thereby limiting the number of electors to seven, the three archbishops before mentioned, the King of Bohemia, the Rhenish palgrave, the Duke of Saxony and the Margrave of Brandenburg. The electors

were recognized as invested with sovereign powers within their respective states, and their subjects were allowed to appeal to the imperial tribunals only in case of a refusal to administer justice. When the imperial authority was at a low ebb, voluntary combinations of various kinds and for different purposes sprang up. The crusades developed the order of Teutonic knights, which became a potent force for a time. During the twelfth century a secret organization known as the *Vehmgericht* grew up, and continued its activity down through the reign of Charles IV (1347 to 1378). Its operations much resembled those of a modern frontier vigilance committee in its summary administration of punishments for offenses against the order. It operated as a check on the arbitrary power of the princes, though often used to gratify the malice of members of the organization. The Hanseatic league grew in importance and waged successful warfare with the Danish king for the protection and extension of its commerce. The petty princes were allowed, and even encouraged, to form leagues among themselves for the maintenance of peace. The actual government of the country was divided between the clergy, whose influence was powerful at all times, the great princes, who were held in check by the feudal lords under them, and the free cities. In these there were struggles between the leading families claiming special privileges and authority and the trades guilds and democratic elements which sought self-protection. The greatest vigor was found where the brains of many were actively employed in public affairs. With the development of industry came the desire for knowledge and the study of the works of the Greeks and Romans. Commerce can flourish only in an atmosphere of order and regulated by recognized laws. The study of Roman law was taken up by the commercial cities, and its rules were followed where applicable. The Germany of today is noted for its schools and the general diffusion and profundity of its learning. Comparatively poor in the quality and extent of their lands, the Germans are perhaps the richest of all the people of the earth in that best possession of all, the knowledge acquired through past ages. The founding of its universities, which have ex-

exercised such a potent influence on modern civilization, began in the fourteenth century. Among the earliest were those of Prague 1348, Heidelberg 1386, Wurzburg 1402, Leipsic 1409, Rostock 1419, Greifwald 1456, Tübingen 1477.

The cities of Swabia formed a league for mutual protection, which for a time became quite potent, and entered into an alliance with the Swiss confederates, but the princes joined in a counter alliance, and in 1388 in a battle at Döffingen the cities were defeated and the tyranny of the petty despots became still more grinding. In the next century a similar war, known as the margraves war, was waged between a league of many cities, headed by Nuremburg, and the princes. In this, as in the case of the Swabian league, the advantage was on the side of the princes. About this time the mediate nobles, prelates and cities began to assert their rights through the medium of local diets into which they gathered. They claimed the right of determining questions of taxation and the purposes to which the money should be put, and also to insist on a regular administration of justice. These diets, composed of the lesser nobility holding a position intermediate between the peasants and the great princes, exercised a salutary check on the arbitrary powers of the great lords. The discovery of gunpowder caused a great change in the art of warfare and was followed by the organization of bands of mercenary troops who fought for whomever would employ them. In 1488 a Swabian confederation, in which princes, mediate nobles and towns joined for the establishment of peace, produced good results temporarily.

With the advent of gunpowder and mercenaries the feudal tie was severed and feudalism came to an end. At the farther extremity of the empire the Magyars, who first appeared as nomads from Asia devastating the country and spreading terror among the Germanic people, gradually adopted settled habits and planted their habitations in a district which had been most of the time under the sovereignty of the emperors.

Nowhere have the baneful tendencies of power long exercised to fall into the hands of men who disregard the primary purpose for which the power was conferred been more



clearly exhibited than in the great Roman Church. The humble purity and self-sacrificing spirit of Jesus were the foundation on which the vast power of the popes was built. Temporal power and revenues became the prime concern of those who ruled the church, and venality and immorality so prevalent that, instead of leading the people in the paths of virtue, the churches became centers of pollution. Germany, with its free cities, its local diets of nobles and its ancient traditions of virtue, quickening with the light of the ancient world, which it had begun to study, was the natural field for the Reformation. In 1517 Martin Luther nailed to the church door in Wittenberg his famous thesis. This was not the first attack that had been made on the prevalent abuses, but it precipitated the conflict which divided the Christian world into hostile factions, who fought, murdered, burned and tortured each other with a fiendish cruelty almost inconceivable. Huss suffered martyrdom one hundred years before for like sentiments. The immediate occasion of Luther's stand was the sale of indulgences by papal authority. This was a remarkable illustration of the prostitution of office for the gratification of the officials. In order to raise money to maintain the pope and high church officials in the splendor so incompatible with the teachings of the Master, the Pope sent out his agents to sell licenses to violate the moral law as taught by the church, and to grant immunity from the consequences of wrongdoing before the commission of the act. The purpose was to raise money to enable the clergy to gratify their own vices. It was even worse in principle than the ordinary robbery of those whom a ruler is bound to protect to minister to his vanity or sensuality, because it encouraged those whose money was taken under a fraudulent claim of power to grant absolution in advance, to violate the moral law and do wrong to themselves and to others. It was a marked exhibition of the inherent tendency for those who possess great power to forget the duties they have assumed and the services they owe to the multitude and pervert their offices to the gratification of their own lusts and selfishness. The church, with its pure and lofty mission of leading men in the paths of virtue and brotherly love.

was distorted into a hideous combination of impostors, who encouraged the violation of the moral law by others for the price of sin paid to themselves. Against the power of the vast church organization Luther opposed the teachings of Christ and the moral law. The free cities, the local diets, the schools, and even the clergy, perceived the strength of his position and the falsity of the papal claims. The revolt against the false assumptions of ecclesiastical power spread with surprising rapidity throughout Germany. The democratic elements sided with Luther, and the nobility divided. The imperial force naturally sided with the Pope. As in most revolutions, the scope of the issue broadened and deepened. What at first was merely a protest against a particular abuse became an attack on the assumption and exercise of a function not warranted by the constitution of the church. Direct accountability of the individual to his Maker, instead of mediate accountability through the church, became the new doctrine. Real spiritual penance of the sinner, instead of money payments or mortifications of flesh imposed by the priesthood, was taught by the reformers. It was a partial return to the democracy of the early church. Whatever forms or names may be assumed, there are at the bottom only two distinct and antagonistic principles of government, the despotic, by which power is exercised by the ruler for his own purposes and gratification, the democratic, where it is used for the good of the multitude. The terms are here used to express purposes, not forms of government. The former is essentially vicious, because it wrongs the many to minister to the vices of the few. The latter is essentially moral, because at its foundation there must be justice, fellowship and mutual help, even if real brotherly love is wanting. Many governments have seemed to be almost wholly despotic. None have ever been purely democratic in the above sense for any long period. The despotic tendency is always present in every established system. Its tendency to grow has been nowhere better illustrated than in the Roman church.

Naturally the despotic elements of society soon rallied to the support of the Pope, while the more democratic sided with

Luther. This is a general statement of the situation, subject to many qualifications resulting from personal interests, surroundings and influences.

Maximilian of Austria was on the imperial throne when Luther took his stand, but died in 1519, and was succeeded as emperor by his grandson Charles V, who was also King of Spain, the two Sicilies, and Lord of Burgundy and the Netherlands. Charles was a typical despot. In the Diet of Worms in 1521 he issued an edict denouncing Luther and placing him under the ban of the empire. Before his election the electors had exacted from Charles a promise that he would respect German liberties and grant reforms which had been demanded from Maximilian. The members of the diet became alarmed at the power assumed by Charles in this edict and took steps to impose checks on it. An administrative council was nominated for the government of Germany while Charles should be away. The number of troops to be raised by each state for common purposes was also definitely settled. Charles invested his brother Ferdinand with sole authority over the Austrian territories and left Germany to enter on his war with Francis I of France. During the absence of Charles Ulrich von Hutten, a young nobleman, conceived the idea of forming a united reformed German state, and under the leadership of Francis von Seckingen a large force was gathered and an attack made on the elector of Treves, but the princes joined their forces and Seckingen was defeated and slain. The idea of religious liberty suggested to the peasantry a revolt against the grievous oppression under which they suffered, and in 1524 they sought their rights with the aid of a few of the nobility. The war spread over much of southern and central Germany, and at first the peasants met with some success, but in the following year they were completely subdued and their condition rendered even worse than before. By these wars the power of the princes was augmented at the expense of the lesser nobility. Nevertheless the Reformation made rapid progress and gained recruits from the various orders of society. Diets were held for the purpose of settling the controversy, in which Charles persistently sought to restore the authority of

the Pope, but met with stubborn resistance from the Protestants. Arbitrary power is never tolerant of criticism of its vices. It clings to them with more tenacity and desperation than to deserved authority. The sale of indulgences, the simony, venality and sensuality of the clergy could not be defended by reason, and all discussion of the truth tended to undermine clerical power. Stern repression was therefore resorted to. Councils were held at Spires in 1526 and 1529, at the first of which the administrative council, which leaned toward the Reformation, granted religious freedom to each state, but at the one in 1529 changes in religion were forbidden. In the following year a diet was held at Augsburg, at which the Lutherans submitted a summary of their doctrines in what was styled the Augsburg Confession. They declined to attend mass and held services of their own in defiance of the will of Charles. In 1532 Charles granted the peace of Nuremberg, by which temporary toleration of the Augsburg Confession was allowed. The Lutheran princes and cities formed a league which took in most of the northern cities and princes and many of the cities of southern Germany. After the peace of Crespy, concluded with France in 1544, Charles turned his arms against the Protestant league and defeated them. He thereupon attempted to compel submission in religious matters. He assumed arbitrary powers which no German Emperor since the early days had been able to wield. His tyranny was distasteful even to the Catholics, and Maurice of Saxony, who had sided with Charles in the first contests, now became the leader of the forces against him. Joining forces with Henry II of France, he compelled Charles to flee from Germany and sign the Peace of Passau, agreeing to summon a new diet, which, having met, again provided for religious toleration of such sort as each state might see fit to accord. This still left abundant room for local discord. The crime of heresy depended for its existence on the ascendancy of Catholic or Protestant and concord with or dissent from the faith of the ruler. The atrocities perpetrated in the lowlands by the duke of Alva, and by Frederick II in Bohemia, were characteristic of a war carried on by a temporal despot

to maintain the false and pernicious rule of a malignant clergy. Nor were the atrocities all on one side. Where they were in power, the Protestants were often as intolerant and bloody as the Catholics. The pure religion of Jesus was not in issue on either side, but tyranny and malice brazenly claimed religious sanction for their fiendish atrocities.

The Thirty Years' war devastated Germany and exhibited the evil that men may do, when to war's ordinary barbarities are added the blind fury of religious fanaticism. Though Germany was the principal field of the struggle, Spain, France, England and Sweden were at times involved, and, when it ended, France took territory on the west and Sweden from the north, thereby materially diminishing the German territory. The long struggle left Catholics in the ascendant in the south and Protestants in the north, and the peace finally concluded at Westphalia in 1648 recognized Catholicism, Lutheranism and Calvinism. The imperial power had been completely shaken off by the Protestant citizens and princes, and after the peace substantially all authority passed to the diet, which alone had power to make laws, declare war and conclude treaties in the name of Germany. Its power over the states was however shadowy, for they were conceded the right to make alliances among themselves, and even with foreign powers if not injurious to the empire. After 1654 the diet became a permanent body and was made up of representatives of the princes and cities, but it exercised little authority. The real governing power lay in the local rulers and the governing bodies of the cities. As a result of the war the population was reduced from about 20,000,000 to 6,000,000 or 7,000,000, and the destruction of property was in a still greater proportion. The once flourishing and powerful Hanseatic League was ruined and broken up in 1635, during the progress of the war. Among the worst effects of the long struggle was the growth of the spirit of despotism among the ruling class, engendered by so long a strain of war, and the feeling of helplessness, dependency and servility among the multitude. Even in the cities democratic systems were converted into powerful oligarchies or swept away by princely

dictation. From the close of the Thirty Year's war to the French Revolution despotic theories of government prevailed, and the spirit of militarism grew. The Austrian Hapsburgs continued to hold the imperial title most of the time, but under the lead of vigorous rulers Prussia developed a rival German power. From the time of Urban IV, when the constitution of the electoral college was first settled, the Margrave of Brandenburg had been one of the imperial electors, and in 1438 the elector Frederick became a candidate for the imperial throne. His successor Frederick II, 1440, 1470, vigorously asserted authority over the cities and built a castle in Berlin.

In 1230 the priestly military order of Teutonic knights, which had been formed during the crusades, entered Prussia, whose people had not yet been converted to Christianity. In the course of a half century they subdued the country and received a grant of dominion over it from the emperor. Under their rule, the country, which was at their advent but sparsely peopled, was settled with many German colonists, and cities and towns were soon built. In the course of a century the power of the order declined, and in 1467 West Prussia became a fundal dependency of Poland. In 1511 the Teutonic Order chose Albert, of the Franconian branch of the Hohenzollerns, as grand master of their order. He embraced the Protestant cause and converted the lands of the order into a secular hereditary duchy in 1525, continuing as a vassal of Poland. In 1611 this duchy fell by inheritance to the elector of Brandenburg, and the two districts were joined as one country under the Hohenzollerns. Thereafter in 1657 under Frederick William, called the great elector, it was declared independent of Poland. In 1701 the elector Frederick III, with the assent of the Emperor purchased by aid in his wars, assumed the title of king and took the crown at Königsberg under the style of King Frederick I of Prussia. Under his rule Prussia made little progress and still ranked along with Bavaria, Saxony and Hanover as dependencies of the empire. His son and successor Frederick William reformed the finances and remodelled the army, which he brought to a

high state of discipline and efficiency, so that Prussia took fourth rank as a military power, though only twelfth in population. He was a despot, but a hardworking, thoughtful and economical one, who labored to add strength to his state. With the aid of the Saxons and Danes he defeated the Swedes and drove them out of Pomerania. He collected taxes in money for the maintenance of his army and abandoned entirely the feudal military system. Everything was bent to strengthen the military establishment, which absorbed five-sevenths of the total revenues. Rigid discipline was imposed, not only on the army but on all employed in the civil service, whose duties were strictly defined and derelictions severely punished. The long and vigorous reign of Frederick II, called the great, 1740 to 1786, witnessed the further development of the military despotism and increase of the territory of the kingdom at the expense of Austria and Poland. In his contests with Austria, France and Russia, Frederick gained great victories, but at fearful cost in human life and misery. The seven years' war witnessed the destruction of numerous towns and villages and a decrease of half a million in the population of the kingdom, but gave to the king the title of Great. Frederick nevertheless labored earnestly to advance the interests and prosperity of the country in accordance with his despotic ideas, and some of his innovations were real reforms. He completely separated the judicial from the administrative departments of government, abolished torture in trials and capital punishment for inferior offenses, confining executions almost entirely to cases of murder. He reduced the expenses of litigation and required that every cause be disposed of within a year. He undertook a codification of the law, which however he was not able to complete. He was a vigilant master over all the public servants, whom he closely watched and held to strict account. Himself an untiring worker, he exacted strict attendance to duty from his subordinates. In matters of religion he granted full liberty to each to go to heaven by any route he chose to travel and allowed full freedom of discussion. The stratification of society he left unchanged, but allowed no authority to the diets conflicting with

his will. His successor ruled according to the same principles, but without the vigor or ability of Frederick.

Austria started as a Margravate of Charlemagne and grew in prominence and territorial extent at times. In 1453 it was raised to the rank of an archduchy. The frequent choice of emperors from the ruling house of Austria gave it a marked prominence among the German states, and the history of the rulers of Austria is largely identical with that of imperial Germany. The Thirty Years' war and the growth of Protestantism in the north weakened the influence of Austria in Northern Germany, and was the entering wedge which ultimately resulted in the destruction of the empire. As a result of its struggles and negotiations, by 1713 Austria had 190,000 square miles of territory and 29,000,000 people. The reign of Maria Theresa, who ascended the throne in 1740 and ruled till 1780, witnessed great wars, including the Seven Years' war with Frederick of Prussia, but was a period of great prominence for Austria, which added still further to its territory. Her husband Francis I was chosen Emperor (1745 to 1765), but his imperial powers were completely overshadowed by those of his wife as ruler of Austria. She was not only a vigorous head of the military power, but a reformer in civil affairs, though by despotic methods. Her son and successor Joseph II attempted sweeping reforms, which however he was unable to carry out.

At the breaking out of the French revolution nearly every vestige of ancient popular government had been obliterated. Arbitrary power was everywhere exercised under a claim of divine right to rule, and backed by military force. In the south there was no constitutional check on the absolute power of the ruler of Austria, save in Hungary, and this was little regarded. In the north the Prussian despotism was vigorously maintained, and in the minor principalities equally arbitrary and despotic maxims were followed. Yet the traditions of ancient liberties still survived, and the people were a strong and vigorous race, fitted for rapid advancement under favorable conditions. As a result of the peculiar political organization of Germany the superior nobility, who were the



real governing power, jealously guarded their social rank, and by their code of *Fürstenrecht* valid marriages of those ranking as the immediate vassals of the emperor could only be made with those of equal rank. Offspring by marriage with the inferior or mediate nobility were treated as illegitimate. The hereditary political power of the margrave, duke or other titled prince, passed by the rule of primogeniture, as did the lands held in feudal tenure from the crown, but allodial lands and personal estates were equally divided among the sons, or in some instances the daughters also took a share, sometimes less than that of a son. All the children however ranked as nobles of inferior degree. The inferior nobility were no less tenacious of their social rank than the princes. The rule of inheritance of rank by all the children has resulted in great multiplication of the lesser nobility, many of whom are exceedingly poor. Prior to the Thirty Years' war the petty lords wielded considerable power and political influence through the diets, but the long struggle left them shorn of their importance, except as they were the holders of estates. As landholders they had valuable privileges. They were judges of all matters of dispute between tenants of their estates, and exempt from taxes and from having soldiers quartered on them. They had the right to settle tradesmen on their estates in opposition to the town guilds. They enjoyed exemption from that severity of punishment which was visited on offending peasants.

The system of land tenures, prevailing at the time of the French Revolution and still unchanged in many parts, exhibits many peculiarities, resulting from ancient ideas and conditions. The village system with many modifications was common throughout Germany, especially in the south and among the Slavonic people. Whether the land was allodial or held by feudal tenure under a lord, in many places all land, except that immediately about the dwellings, was held in common and subject to changing occupancy by periods of varying length. Pasture and woodlands were usually used in common, the tilled land only being divided. In other places the cultivated land was divided and held in severalty, but

without power of alienation by the owner without the consent of all who might be entitled to inherit it, and the balance was used in common. Various regulations were made with reference to the construction of dwellings and the division of the land. In some places the village is built along a single street, and the land cut in long strips extending back from the dwellings. In others the dwellings are in a cluster and the land divided so as to assign to each his three fields, to be tilled according to the prevailing three field system of rotation of crops. Where the system of permanent ownership of these fields obtains, whenever cultivation is extended over reclaimed forests or other common lands, a division of these is made, and each receives his allotment. As a result of inheritance still further divisions are made, and thus it has come to be the case that much of the land is divided into exceedingly small patches, and one owner may have a great number of them scattered about. In some cases, for mutual protection, the peasants gathered into larger villages, and the lands they held were scattered over a considerable district. In some places all the lands have been divided, while in others there are still common pasture, forest and meadow lands. In the northern and western parts the village system is not general; the farms are in compact bodies, with dwellings scattered over the country. This has been promoted by the entailment of estates, by a custom of leaving the land to a single heir and by restriction of the numbers of children.

The minute subdivision of lands has been regarded as an evil, and in some of the states methods have been adopted by the government of reapportioning the districts so as to throw all the lands of an owner into a compact body. This has been found a somewhat difficult task to perform satisfactorily. While some of these peasant holdings were free or allodial, as a rule they were under a lord, who not only took a share of the produce, but was also accustomed to compel the tenant to labor for him on his separate lands a portion of the time. Such service was called *frohn*, and, as the lord was himself the judge of all matters of right on his estate, was often very oppressively exacted. The condition of the peasantry from

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the establishment of the feudal system till the revolution was essentially that of serfs, and those claiming allodial tenures were loaded with taxes or pillaged in one form or another, so that their condition was hardly distinguishable from that of the feudatories. Poverty and oppression in peaceful times, ruin and death in war, have been the lot of the German peasants for many centuries. In the cities the ancient democratic systems had been crushed, and all political power was in the hands of the princes and nobility.

In the development of its system of laws the situation of Germany was somewhat peculiar. After Charlemagne no Emperor was sufficiently powerful, and at the same time sufficiently interested in general rules of law, to undertake much legislation for the government of the empire. The feudal system furnished the basis of land tenures, and the peasantry had to submit to the rulership of their lords, whose will, whatever it might be, was law. On church lands the rule of the clergy and heads of monastic institutions was probably rather more mild on the whole than that of the barons, but was generally oppressive. For the government of trade the Roman law was studied and followed with more or less modifications. During the times when the free cities maintained their leagues, they established their own rules and customs, but with the founding of schools came the study of the learning of the Greeks and Romans, and the principles of the Roman law were taken as guides in the administration of justice.

The history and government of Poland is closely allied and interwoven with that of Germany, though the stratification of its society is somewhat different. In the earliest times of which we have any accounts there were three orders, 1. The nobles, who were the rulers; 2. Peasants, personally free but bound to do fixed services for their lords; 3. Serfs, who were the property of their masters and under their absolute power. In 965 King Mieczyslaw, in order to gain the hand of the daughter of the Bohemian king, consented to become a Christian and be baptized. He thereupon proceeded to convert the nation by commanding all Poles to be baptized. The Poles came in frequent contact with the Russians in the east and

the Germans on the west. In these struggles they were on the whole fairly successful in maintaining their position, and by the time of Casimir III Poland held high rank among the states. In 1364 the foundation of the university of Cracow was laid by Casimir, whose plans with reference to it were afterward carried forward by Queen Jadwiga. In 1347 by the statute of Wislica many matters were regulated. The duty of a palatine was to lead the troops of his palatinate in war and to preside over the diet of the nobles of his province. Under the palatines were castellans who were their lieutenants in war. Palatines and castellans were senators and judicial officers who held court in their provinces. *Nuntii*, deputies, were chosen from the various districts of each palatinate. The senators, of whom sixteen were ecclesiastics, all sat in one house. By this statute the power of life and death, theretofore exercised by the nobility over the lives of their serfs, was taken away, and a peasant ill treated by his lord was allowed to remove to the estate of another. The inhabitants of the towns, of whom many were Germans, were governed by the law of Magdeburg, to administer which a Teutonic tribunal was established at Cracow, consisting of a judge versed in foreign law and seven citizens nominated by the starosta. It is said that before this there were no written laws in Poland. The national diet was made up of the nobles and upper clergy and some of the prominent citizens. It soon not only determined questions of peace and war but also elected the kings. The diet chose as Casimir's successor Louis, King of Hungary. In 1369 by the marriage of Queen Jadwiga with Jagiello Prince of Lithuania the two countries were united. He was not a Christian, but became one and proceeded to convert his Lithuanian pagan subjects by commanding them to be baptized. In a diet held in 1496 it was ordained that thereafter no peasant or burgher should hold office in the church, and the peasantry were obliged to submit their causes to courts presided over by their noble masters. It was also decreed that no king should declare war without the consent of the diet. Shortly after this burghers and peasants were prohibited from owning lands. In the diets the Slavonic

principle of unanimity of decision was adopted. This proved not merely inconvenient but disastrous, and rendered it possible to prevent action on any matter of importance by merely corrupting one member. When majorities were effectively checked by minorities, fights and bloodshed often followed. Nowhere was the rule of an oligarchy more complete and tyrannical, and nowhere else was there ever more turbulence and discord among the governing body. In 1529 Sigismund published his code of laws in the White Russian language. Though by the *pacta conventa*, exacted from Henry of Valois when he was elected to the Polish throne, the power of the King had been closely limited, on the choice of Stephen Batory as his successor, after Henry's return to France to become its king, still further restrictions were imposed by the nobles. Sixteen senators were chosen at each diet to attend and counsel with the king, and no decree could be issued by him without their consent. The right of final appeal to the king was taken away, and his jurisdiction was limited to a small district about his palace. The local diets of the palatinates elected their judges, who constituted courts of final jurisdiction over causes between the nobles. In 1617 Wladislaw, son of King Sigismund of Poland, was chosen Czar of Russia, but he was soon driven out. In 1652 a single member of the diet by his veto prevented a resolution in which all the rest concurred. Afterward action was similarly defeated on many occasions. Under John Sobieski the Poles took a leading part in the great battles with the Turks which resulted in their crushing defeat before Vienna in 1683. From this time the power of Poland rapidly declined. In 1772 the first partition was made, in which Prussia, Austria and Russia each took portions of its territory, and in 1846 the last vestiges of its independent national existence were obliterated by its great neighbors. The constitution and characteristics of Polish society were peculiar. It had law but no justice, a king with little real power and a sorely oppressed peasantry. The nobility, who alone possessed real power, surrounded themselves with their retainers and lived in luxury and vice from the labors of their serfs. In their associations with each other

they were turbulent, quarrelsome and jealous, yet in contests with kings and peasants they zealously maintained the unjust privileges of their order. Poland presented compactly the undivided rule of the nobility, which throughout Germany was interspersed with democratic cities and peasant communities maintaining more or less independence in the management of their local affairs. Its loss of national life was mainly due to the lack of moral basis for the authority exercised by the nobility and the want of a recognized theory binding the people together for their mutual protection. Gross oppression of the multitude destroyed the military efficiency of the common people, and the rivalries, ambitions and jealousies of the nobility unfitted them for coöperation against foreign enemies.

In its educational institutions Germany took high rank at the time of the French Revolution, most of her great universities having been founded long before that time. Religious toleration and a genuine desire for knowledge tended to favorable conditions for the dissemination of political truths. While German rulers were alarmed at the uprising in France and arrayed themselves on the side of kingly rule, there was much response among the people to the demand for liberty, equality and fraternity. With the cry of "war to the palace but peace to the cottage," Napoleon was able to recruit his armies on German territory and to attach many of the smaller states to his interests. Though himself a military despot, Napoleon succeeded in posing as the leader of the multitude in an attack on arbitrary power, and his successes were largely due to the rising spirit of the commonalty. During the progress of the wars with Napoleon reforms were freely promised by German rulers, and in 1807 under the lead of Stein Prussia established a responsible ministry as the confidential advisers and executive agents of the king, abolished serfdom, removed the disability to own land from the common people, and allowed to all a free choice of occupation. By the *Stadteordnung* of 1808 the right of local self-government was restored to the cities, and the system of administration was thoroughly reformed. In 1810 Hardenberg broke the

bond between the peasants and landed aristocracy by making the tenants absolute owners of two-thirds their holdings, leaving the other third to the landlord. Yet more important was the establishment of the great common school system under the guidance of William von Humboldt, which has been of such incalculable benefit. The military system was again remodelled so as to include in the army the whole body capable of bearing arms. In the final struggle by which Napoleon was overthrown, Prussia played a leading part. Thorough reforms were also made in the civil administration, and appointments were based on competitive examinations.

In Austria, though some concessions were made tending to relieve the oppressed peasantry, and more were promised, no marked change of system was inaugurated.

In 1806 Napoleon succeeded in forming the Confederation of the Rhine, composed of central and southern states with himself as protector, thus detaching from Austria and Prussia a large German element. After the first peace of Paris a congress of German state was held at Vienna to rearrange the political constitution of Germany. Prussia was given part of Saxony, the Rhineland and Swedish Pomerania, Austria took Salzburg, Vorolberg and Tyrol. The members of the Rhenish confederation were mostly left with their territory intact, the kingdom of Westphalia and other states established by Napoleon being abolished. Hanover was made a kingdom, Weimer, Mecklenburg and Oldenburg grand duchies, and Lubeck, Bremen, Hamburg and Frankfort free cities. The German Bund was formed, composed of thirty-nine states, each independent in its local affairs. The governing body was a Diet in which each state was represented, sitting at Frankfort under the presidency of the Austrian plenipotentiary. The Diet was authorized to settle all disputes between members of the confederation, neither of which was allowed to make war on another, nor to form alliances against the interests of any other member. It was further provided that each state should establish a constitutional system of government.

The restoration of the Bourbons to power in France was followed by a reaction in which the kings again asserted their

arbitrary powers. Austria, under the guiding hand of Metternich, continued to be a harsh and grinding despotism, ruling over a diverse population of Germans, Magyars, Slavs, Italians and others. No steps were taken to secure popular representation or substantial justice to the lower stratum of society. Neither did Prussia proceed to form a constitutional government, though a number of provincial diets were appointed. The government soon began to fear the march of liberal ideas at the schools, and in 1819 a conference of the ministers resulted in issuing a decree placing the universities under police supervision and providing for rigid censorship of publications. A commission was also appointed to detect secret political societies. In Nassau, Weimar, Bavaria, Baden and Würtemberg constitutions were granted which resulted in checking the arbitrary rule but little. The reactionists maintained their ground till 1830, when constitutional governments were established in Hanover,, Brunswick, Saxony and Hesse-Cassel, and freedom of the press was granted in the other constitutional states. The main advance made through the medium of the Diet was in the abolition of trade restrictions and the foundation of the *Zollverein*, in which all the states but Austria joined. In 1847, to prevent a popular rising which seemed threatening, Frederick William IV of Prussia summoned to Berlin a diet, made up of representatives of the provincial diets, which formulated its demands for popular representation in government, but the king refused to abate his claims of power to rule by right Divine. In the following year a popular convention was held at Mannheim, at which four fundamental reforms were demanded,—freedom of the press, trial by jury, national armies, and popular representation. These demands were universally adopted by the liberals, and within a few days thereafter there was a liberal ministry in each of the small states. In Austria Metternich was dismissed, a new cabinet for Hungary appointed and constitutional government promised. In Prussia there was a popular uprising, and Frederick William promised compliance with the demand for constitutional government. An assembly was summoned, at which the demands of the



reformers were discussed. At last the king dissolved the assembly, and on Dec. 5, 1848 granted a constitution and gave orders for the election of a representative chamber. In the meantime, at a preliminary meeting held at Heidelberg, a call was made for all Germans who were or at any time had been members of the Diet to meet at Frankfort to consider the subject of national reforms. About 500 accepted the invitation and convened. After long discussion and the failure of many projects for a compact German state, a scheme was adopted and accepted by a number of states under the name of The Union, and on March 20, 1850 a parliament consisting of two houses, chosen under the arrangement, met at Erfurt. Austria again headed the reactionists, and under her leadership representatives of the states met at Frankfort on Sept. 4, 1850, and proceeded to act as the restored Diet. Prussia stood at the head of the Union, Austria of the old Bund. Prussia and its supporters however soon yielded, and from June 12, 1851, the old Diet was recognized and went on with its sittings as before and the Union disappeared. Following the outbursts of 1847 and 1848 was a period of reaction in which political offenders, *i.e.* those opposing arbitrary power, were severely treated, and petty despotism again appeared triumphant notwithstanding the constitutions. In 1864 Prussia took Schleswig, Holstein and Lauenburg from Denmark by force. In 1866 the superiority of the military establishment of Prussia over that of Austria was demonstrated in a most remarkable campaign begun June 14 and ended July 3 by the battle of Königgratz, in which Austria was completely humiliated. Thereupon Prussia annexed Hanover, Hesse-Cassel, Nassau, Frankfort, Schleswig and Holstein. All states north of the Main were forced into a North German confederation with Prussia at its head. Steps were taken for the formation of a confederate parliament, but the war with France in 1870 cleared the way for the present empire. On Jan. 18, 1871 in the palace of Versailles and in the presence of a great assemblage of German princes and officers the Prussian king was proclaimed emperor of Germany. The existing German empire was thereupon established and sanc-

tioned by Austria and the confederate parliament. On March 21, 1871, the Diet met at Berlin and the constitution of the North German confederation, which had been accepted in 1867 by a Diet elected by general ballot, was extended and revised to meet the changed conditions. By this constitution all the German states, except those included with Austria, Hungary, Holland and Belgium, the two last named of which of late have not been treated as strictly German, became consolidated in the new German Empire.

The present constitution was promulgated April 16, 1871, by the Kings of Prussia, Bavaria and Württemberg and the Grand Dukes of Baden and Hesse. It defines the territory of the empire and gives its laws precedence over those of the individual states. All laws are required to be proclaimed in the *Imperial Gazette*. A common citizenship is established throughout all Germany, on which no state may place limitations.

The following matters are under the legislative control of the empire; matters of domicile, citizenship, passports, trade and industry, custom duties, commerce, regulation of weights, measures, coinage and the emission of paper money, general banking regulations, patents for inventions and copyrights, protection of trade in foreign countries and organization of the consular service, railways, navigation on water ways common to several states, postal and telegraph affairs, reciprocal execution of judgments of one state in another, the authentication of public documents, laws concerning notes, obligations, commerce, crimes and legal procedure, police regulation of medical and veterinary matters, and laws relating to the press and to the right of association.

The legislative power is vested in the Federal Council and *Reichstag*. A majority of votes of each body is necessary for the passage of a law. The Federal Council consists of fifty-eight members, of which Prussia has seventeen, Bavaria six, Saxony and Württemberg four each. Baden and Hesse three each, Mecklenburg-Schwerin and Brunswick two each and Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt,

Schwartzburg-Rudolstadt, Schwartzburg-Sonderhausen, Waldeck, Reuss (elder branch), Reuss (younger branch), Schomberg-Lippe. Lippe, Lubeck, Bremen and Hamburg one each, but the vote of each state must be cast as a unit. The Federal Council has a general oversight of the execution of the laws of the empire, appoints seven permanent committees from its own members and proposes laws to the *Reichstag*. Each member of the Council has the right to appear and be heard in the *Reichstag*, but the same person cannot be a member of the Council and *Reichstag* at the same time.

The king of Prussia is made president of the Confederation with the title German Emperor with power to declare war and conclude peace, form alliances, make treaties, accredit and receive ambassadors; but for a declaration of war in the name of the empire the consent of the Council is required, except in case of attack. He convenes the Council and *Reichstag*, adjourns and closes them. The Council and Diet shall be convoked annually. The Council may be convoked without the *Reichstag*, but the latter cannot be without the Council. The Chancellor of the empire presides in the council. Bills laid before the Council in the name of the emperor and adopted are presented to the *Reichstag* and advocated by members of the Council or by special commissioners appointed by them. The Emperor appoints and dismisses imperial officials, prepares and publishes the laws and supervises their execution. "The decrees and ordinances of the Emperor shall be made in the name of the empire, and require for their validity the signature of the Imperial Chancellor, who thereby takes upon himself the responsibility for them."

The members of the *Reichstag* are chosen by ballot for three years' terms. An imperial official may be elected to the *Reichstag*, but if he accepts an office of higher rank, or if a member accepts a new appointment to a salaried office of the empire or a state, he forfeits his seat. The proceedings of the *Reichstag* are public, and it may propose laws, and has power to judge of the election of its own members and regulate the mode of transacting its business. A majority of all constitutes a quorum. In matters not affecting the whole em-

pire only members from the states concerned may vote. Members have a limited privilege from arrest and draw no pay as such. Germany forms a custom and commercial union with substantially free trade among its states, except that the Hanseatic cities of Bremen and Hamburg remain free ports outside the union. Custom duties are regulated by the empire. A number of special provisions relating to taxation are inserted.

"Art. 41. Railways, which are considered necessary for the defense of Germany, or in the interest of general commerce, may, by imperial law, be constructed at the cost of the empire, even in opposition to the will of those members of the union through whose territory the railroads run, without prejudice however, to the sovereign rights of that country; or private persons may be charged with their construction and receive rights of expropriation. Every existing railway company is bound to permit new railroad lines to be connected with it, at the expense of the latter. All laws granting existing railway companies the right of injunction against the building of parallel or competitive lines are hereby abolished throughout the empire, without detriment to rights already acquired. Such rights of injunction cannot be granted in concessions to be given hereafter." Provisions are made for the operation of all railroads in harmony and all charges are subject to Imperial control. Art. 48. "The post and telegraph system shall be organized on a uniform plan and managed as state institutions throughout the German Empire."

Art. 50. "The Emperor has supreme supervision of the administration of post and telegraph."

Art. 53. "The navy of the Empire is a united one under the supreme command of the Emperor."

The merchant marine is made subject to regulation by the Empire.

Art. 57. "Every German is subject to military duty, and in the discharge of this duty no substitute can be accepted."

Art. 59. "Every German capable of bearing arms shall belong for seven years to the standing army." Three years in active service, four years in reserve. The next eleven articles

also relate to military affairs and contain among others the following provisions:

Art. 64. "All German troops are bound implicitly to obey the orders of the Emperor. This obligation shall be included in the military oath."

Art. 68. "The Emperor shall have the power, if public security within the federal territory demands it, to declare martial law in any part of the Empire; and until the publication of a law regulating the occasions, the form of the announcement, and the effect of such a declaration, the provisions of the Prussian law of June 4, 1851 shall be considered in force."

Arts. 69 to 73 inclusive relate to finances.

Art. 69. "All receipts and expenditures of the Empire shall be estimated yearly, and included in the budget. The latter shall be fixed by law before the beginning of the fiscal year."

Art. 76. "Disputes between the different states of the union, so far as they are not of a private nature and therefore to be decided by the competent judicial authorities, shall be settled by the federal council, at the request of one of the parties."

Art. 78. "Amendments of the Constitution shall be made by legislative enactment. They shall be considered as rejected when fourteen votes are cast against them in the federal council. The provisions of the Constitution of the Empire, by which certain rights are secured to particular states of the union in relation to the whole, shall only be modified with the consent of the states affected."

An analysis of this readily shows that the leading purpose subserved is that of organization and consolidation of the German states into one Empire with increased military efficiency. There is no article in the whole instrument clearly framed to protect the citizens against the usurpation or unjust use of power by the government. The *Reichstag* as a representative body is the sole check on Imperial power. Its legislative powers are not circumscribed.

To an American it seems strange that there is no separate title devoted to the Judiciary. The mention of courts is incidental and there is not a line establishing any independent

power in them, with the sole exception that certain offenses affecting the state are to be tried before the Court of Appeals of the three free Hanseatic towns at Lubeck. The principal mention of the courts is in the latter part of Article 75, as follows: "More definite provisions as to the competency and the procedure of the Superior Court of Appeals shall be made by imperial law. Until the passage of a law of the Empire, the existing competency of the courts in the respective states of the Empire, and the provisions relating to the procedure of those courts shall remain in force."<sup>1</sup>

Each of the states included within the empire except Alsace, Lorraine and the two grand duchies of Mecklenburg have constitutional governments, and the six larger states have two houses in their legislative bodies in which the upper includes the nobility, clergy and representatives of the wealthy class, and the lower is made up of representatives chosen by the voters.

In the completeness of its military organization Germany may fairly be accorded first place among all the nations of the earth. Every man is subject to military service and no substitution is allowed, every German capable of bearing arms is required to serve in the standing army seven years from the age of twenty-one to twenty-eight. The first three years he must spend in active service and the remainder in the reserve. After this he belongs to the *landwehr* for five years more. Those receiving a fixed standard of high school training are required to serve actively only one year. All males between the ages of seventeen and forty-two, not included in the above, are members of the *landsturm*, liable to be called into active service in case of invasion. The emperor is the commander of this immense force, which is most thoroughly and efficiently organized with officers of various grades appointed by him.

Of the expenditures of the Imperial Government the army and navy and military pensions have absorbed as high as eighty per cent of the total. This, however, does not include expenditures in the maintenance and operation of the railroads, posts and telegraphs, which are paid from earnings and leave a net surplus of revenue.

<sup>1</sup> Foreign Constitutions 1894.

Education is made compulsory throughout the empire. Most of the expenses of the primary and secondary schools are borne by the local governments, but much is done by the imperial government to promote the educational system. Its great universities rank with the best in the world. Many of these have endowments which go far toward defraying their expenses. No other country has done more to distribute among its people the treasures of accumulated knowledge than Germany, and none has profited more from the wisdom of such a course. As a result of its most excellent school system illiteracy among its people is almost unknown, and its great universities and technical schools are famed the world over for their thoroughness and breadth of learning as well as for their progressiveness. At the head of the judicial system is the *Reichgericht*, the judges of which, 90 in number, are appointed by the emperor. It is the supreme court and court of appeals for the empire. All inferior courts are courts of the separate states, but all are subject to imperial legislation. Small civil cases involving amounts up to about \$100 are decided by the *Amtsgericht*. Above is the *Landesgericht*, of which there are 170 in the empire, with more extended jurisdiction, and over this is the *Ober Landesgericht*, the highest court of the state, exercising appellate jurisdiction. Petty offenses are tried by a judge and two *Schöffen*: Serious crimes by judge and jury. Courts of arbitration, presided over by a judge, are also provided for commercial causes. The system of procedure is rather more summary than that prevailing in England and the United States. The law is studied as a profession, and advocates practice before the courts. The number of lawyers, however, in proportion to population is relatively very small. The judges and members of the profession bear high rank for integrity and ability, and except in rare political causes, the administration of justice is efficient and creditable. A summary of the Civil Code which took effect in 1900 will be found in the Appendix.

The political history of Hungary is interwoven with that of Austria and can best be considered in connection with it.

The first king of Hungary is called St. Stephen, and ruled

997 to 1038. He was converted to Christianity and took active measures to convert his subjects. He was very zealous in promoting the establishment of churches and monasteries. The king owned a large part of the lands, from which he received a portion of the crops and military service from his retainers on them. He also levied taxes on the products of the mines and exacted one-thirtieth the price of merchandise sold at fairs, as well as tolls on roads, bridges and ferries. Presents to the king were also required from the towns on given days. The power of the king was not that of an absolute ruler over the whole country, but resembled more a great proprietor's over his estate. The Church and the nobility exercised over their domains substantially the same authority as the king over his. At court the king had his lord palatine, court judge, lord of the treasury and minor officials. The towns elected their own judges and local officials. The laborers on the estates of the king and of the nobility were without political rights, and subject to the authority of their lords. The powers of the king were not clearly defined. Appeals lay from the acts of the nobles to the king, but in their own domains the nobles were practically absolute masters. The authority of the king was theoretically absolute, but subject in fact to checks imposed by the nobility. A most remarkable document, bearing a strong resemblance to the English Magna Charta, is called the "Golden Bull," extorted from Andrew II, who ruled 1205 to 1235, given in the form of a letter, by which he recited that, "The nobles and others in our realm have suffered detriment, in many parts, of their liberties as established by King St. Stephen, through the power of some kings, who either from anger revenged themselves or listened to the counsel of wicked advisers or sought their own advantage." It then proceeds to ordain that the anniversary of the sacred king should be celebrated at Stuhlweissenburg: that the king should be present in person or by his palatine to hear causes; that all the nobles might freely assemble there; that the nobles should not be detained or oppressed except by due process of law; that no taxes should be levied on the estates of the nobles or the clergy; that if a noble die without male issue his



daughters should inherit one-fourth his property and the rest he might dispose of as he pleased, in default of which it should go to his next of kin, but in case he was absolutely without kin then to the king. If the nobles were called on to go out of the country to war he must pay the expense. "The palatine shall be judge over all the people of our realm without distinction, but in capital cases and matters of property which concern the nobles, the palatine shall not decide, without the king's knowledge"; that foreigners should not be given lands and should not be elevated to dignities without the consent of the council of the realm; that offices should not be granted in perpetuity, and Ishmaelites and Jews should be incapable of holding them "excepting these four great lords, the palatine, the banus, the court judges of the king and queen, no one shall have two dignities at the same time. Should, however, we or any of our successors at any time be disposed to infringe upon any of these four orders, the bishops as well as the other lords and the nobles of the realm shall be at liberty, jointly or singly, by virtue of this letter, to oppose and contradict us and our successors forever, without incurring the penalty of treason."

All the burdens were of course borne by the peasants and laborers. From the fruits of their toil the landed gentry lived in idleness and drunkenness. Against the oppression of the lord the peasant could only appeal to the lord himself, with the chance of greater oppression for having made complaint. In 1514 the peasants were gathered for the crusade. Many of the lords opposed it because they needed the laborers in the fields. 40,000 of them assembled at Pesth. Instead of marching against the Turks, under the leadership of George Dozsa they marched against the nobles. They took many castles and massacred such of the nobles and their families as fell into their hands. The nobles finally rallied and under the lead of the vayvode of Transsylvania defeated the peasants and captured Dozsa, whom they placed on a red hot iron throne and crowned with a red hot crown and gave a red hot sceptre. Many others were tortured and killed. The diet, which assembled soon after, ordained the perpetual servitude of the peasantry, and fixed them to the soil, which before that

time they had been allowed to leave. At the same session was passed and confirmed by the king what is termed the tri-partite code, compiled by Stephen Verboczy the chief justice. It accorded equal rights to all the nobles, who could not be deprived of liberty without due trial and were exempt from taxation and subject only to the king and as to the peasant it provided, "The peasant has no sort of right over his master's land save bare compensation for his labor and such other rewards that he may obtain. Every species of property belongs to the landlord, and the peasant has no right to invoke justice and the law against a noble."

Austria, so long the head of the German Empire, has ceased to be a part of it, but is still one of the great states of Europe. The past century has witnessed the loss of much of its territory, including its possessions in Italy, but it still governs a large and exceedingly rich district. When in 1806 Napoleon established the confederation of the Rhine from sixteen German States, the Emperor Francis renounced the title of emperor of the Romans and assumed that of Emperor of Austria. Though promises of reforms were made, Austria constantly recurred to its despotic methods, and lent its aid to perpetuate arbitrary rulership throughout Europe. The only marked step in advance during the long reign of Francis, who died in 1835, was the establishment of a system of primary schools. Discontent grew among the people, and in 1846 an insurrection occurred in Galicia. This was soon suppressed, and the dismemberment of Poland was completed. In 1848 far more serious outbreaks occurred. Metternich, the counselor of tyranny, resigned and went to London. An imperial proclamation was issued abolishing the censorship of the press, establishing a national guard and convoking a national assembly. Under the leadership of the members of the university of Vienna the national guard and academic legion organized a committee and dictated laws to the government. On May 17, the Emperor Ferdinand and his wife fled to Innsbruck. Uprisings in Italy followed and soon after in Bohemia and Hungary also. Civil war ensued between the imperial supporters and the revolutionists, which did not end till 1850.

ooo Russian troops invaded Hungary in support of the imperial cause. The triumph of the supporters of despotic rule was accompanied by the slaughter of great numbers in battles and by shooting and hanging the leaders of the revolt who were captured. The congress organized by the revolutionists was dissolved and the emperor, of his own motion, promulgated a constitution. Many reforms and internal improvements were now undertaken, but the old tendency to relapse into military despotism soon asserted itself, and on Jan. 1, 1852, it was announced that the constitution was abolished. In 1859 the combined forces of France and Sardinia drove the Austrians from Italy, and in March 1860 the emperor promulgated a new constitution, by which he declared that the right to enact, alter and abolish laws should thereafter be exercised by himself and his successors only with the coöperation of the *Reichsrath*. This body was established for the empire and to be composed of representatives of the several kingdoms included within it. On Feb. 27, 1861, it was decreed that their former constitutions should be restored to Hungary, Croatia, Slavonia and Transylvania. At the same time a law was promulgated providing for the representation of the different portions of the empire in the *Reichsrath*, which was made up of two bodies, a house of peers and one of deputies. On May 1, 1861, the new *Reichsrath* was formally opened by the emperor in a speech in which he said, "that liberal institutions with the conscientious introduction and maintenance of the principles of equal rights to all the nationalities of his empire, of the equality of all his subjects in the eye of the law, and of the participation of the representatives of the people in the legislation, would lead to a salutary transformation of the whole monarchy." Hungary, Croatia, Slavonia and Transylvania declined to send representatives, claiming separate constitutions. After the humiliating defeat by the Prussians in 1866, the emperor turned his attention to the improvement of the affairs of his empire. The Hungarians were in passive rebellion, refusing to pay their taxes. In 1865, the emperor had recognized the necessity of self-government for Hungary in local affairs, and on Nov. 19, 1866, by an imperial rescript,

he promised the appointment of a responsible ministry and the restoration of municipal self-government. Baron Beust, a Saxon and a Protestant, was made prime minister of the empire. In 1867 the *Reichsrath* assembled at Vienna, and many important measures of reform were adopted. On June 8, 1867 the emperor and empress were crowned king and queen of Hungary at Pesth, at which time pardon and amnesty for political offenses were granted. Religious toleration was accorded by the *Reichsrath*. In 1873 the power of choosing members of the *Reichsrath* was transferred from the provincial diets to the voters.

Under its present constitution Austria-Hungary recognizes the hereditary succession to the throne by primogeniture in the male line of the house of Hapsburg-Lothringen and, on the failure of male heirs, in the female line. Two distinct states are recognized as joined for common ends, each having its own ministers and legislative bodies. These are subordinate to a controlling body called the Delegations, consisting of sixty members of each state, two-thirds elected by the lower house and one-third by the upper house of each parliamentary body. They usually sit and vote in two chambers, one for Austria and the other for Hungary, but in case of disagreement they all sit together, and the decision of a majority is binding on both states when approved by the emperor. The administration of the empire is divided into three executive departments, Foreign Affairs, Ministry of War, Ministry of Finance. These ministers are accountable to the Delegations. The *Reichsrath* of Austria consists of an upper and lower house. The former is composed of: First, Princes of the Imperial House; Second, Heads of noble houses of high hereditary rank; Third, Archbishops and bishops with the rank of princes; Fourth, Life members, nominated by the emperor for distinguished services. The lower house is composed of three hundred and fifty-three members elected by all citizens possessing a small property qualification. The emperor convokes the *Reichsrath* annually and nominates the presiding officers of each house from among its members. It has general legislative powers on matters of trade, finance,

railways, posts, telegraphs, customs, mints, military service, etc. Members of either house may propose new laws, which must receive the sanction of both houses and the emperor. The executive functions for Austria are vested in a Ministerial Council presided over by the emperor or minister president and made up of ministers of the interior, of religion and education, finance, commerce, agriculture, national defense, and justice. There are also local diets in the seventeen provinces with powers over local concerns.

The Hungarian parliament also has an upper and a lower house, known as the House of Magnates and the House of Representatives. The former is made up of three princes of the reigning house having estates in Hungary, thirty-one archbishops and bishops and 381 high officials and noblemen. The Lower House is made up of representatives chosen for three years by all citizens paying a certain amount of tax and contains about 450 members. There is a similar ministry in charge of the executive department for Hungary as in Austria. Great progress has been made during the last half century in the educational system, but it is still far behind that of Prussia, owing largely to the domination of the priesthood. All children from 6 to 12 are bound to attend the common schools. There is a fair system of secondary schools and there are seven universities at Vienna, Gratz, Innsbruck, Prague, Cracow, Lemberg and Pesth. There are also various technical schools. Austria-Hungary has made great progress in its railroads, owned by the state, which are a marked success and afford excellent service at exceptionally low rates. It also owns and operates the telegraphs. The judicial system for Hungary is independent of the administration. The supreme court sits at Buda-Pesth. There is a secondary court of appeals at Moros-Vacarhely in Transylvania. Under these is a system of what are termed royal courts and of circuit courts.

On July 23, 1914, Francis Ferdinand, archduke of Austria, and his wife were killed at Sarajevo in Bosnia by a Serb. The crime was charged to Serbia, and Austria made demands with which the Servian government was unwilling to comply, but it offered to submit the matters in difference to the Hague Tri-

bunal. To this Austria refused to consent but demanded immediate acceptance of its terms. On July 28, 1914, Austria-Hungary declared war on Servia. Other declarations of war then followed in rapid succession: by Germany on Russia on August 1; by Germany on Belgium on August 4; by England on Germany on August 5; Austria-Hungary and Russia declared war on each other on August 6; England declared war on Austria-Hungary on August 13, and Japan declared war on Germany on August 23. Germany invaded Belgium on August 2 and attacked Liege on Aug. 5. War with all its horrors blazed on both the eastern and western fronts, and one after another the leading nations of the world took part in the conflict, Bulgaria and Turkey siding with Austria and Germany, and Italy, Roumania and others with France and Great Britain. On April 6, 1917, President Wilson signed the resolution which had been passed by Congress declaring a state of war with Germany. Thus began the greatest war of all time. More men and more of the nations participated in it than in any other, and new inventions extended the field of military operations to the air and the depths of the sea and added new and vastly more destructive explosives and engines of warfare than were ever known before. Germany began the work of slaughter and destruction with by far the largest and best equipped army that had ever been organized, and expected to be able to crush France, Belgium and Russia before England or the other nations could come to their aid with any considerable force. Confident of the strength of its material forces it flouted the moral sentiment of the world by the unprovoked and ruthless slaughter and destruction it wrought in Belgium. Moral sentiment, backed by sufficient material force, at last crushed the armies and navy of Germany and its allies and imposed a most humiliating treaty of peace, which was signed at Versailles on June 28, 1919, though an armistice had terminated the fighting on November 11, 1918. For the first time in history a great army of Americans fought in Europe and became the determining factor in a struggle between European powers.

This war, for which the imperial houses of Hapsburg and

Hohenzollern are held responsible, resulted in the overthrow of their dynasties, the dismemberment of Austria-Hungary and a substantial reduction of the area of Germany. Poland has been resurrected, and the new state of Czecho-Slovakia has been formed. On the south Servia and Montenegro with much territory taken from Austria-Hungary have been merged into the Serb-Croat-Slovene State. Greece has acquired much territory from Turkey and Bulgaria, and the boundaries of Roumania have been extended at the expense of its neighbors. In the north Danzig has been made a free city, mainly for the purpose of affording Poland an outlet to the sea. The republics of Finland, Esthonia, Latvia and Lithuania have been formed from fragments of the great Russian Empire. Italy has gained territory in the north and on the east coast of the Adriatic, and the territory in Alsace and Lorraine, which was taken by Germany by the treaties of 1871, is restored to France. Part of Schleswig is restored to Denmark, and other adjustments of boundaries at the expense of Germany have been made.

The changes wrought in the political affairs of the country ruled by the Central Powers before the war are far more important than the mere changes in boundaries. Contemporaneous with the termination of the war the German Emperor abandoned the throne and took refuge in Holland, and a republic was organized, which took definite form on the adoption of a new constitution. A National Constituent Assembly was elected on January 19, 1919, and convened at Weimar. On July 31 it adopted a new constitution which became effective on August 13, 1919. This constitution effects so many changes in the fundamental law of Germany and contains so many important, carefully prepared provisions, that it is worthy of most careful study, and a full copy of it is given in the appendix. Full summaries of the constitutions of the new republics of Poland and Czecho-Slovakia are also given in the appendix. These are not so full or complete as the constitution of Germany, but each of them exhibits the growth of liberal political sentiment and an earnest effort to improve the organization of society.

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## CHAPTER XXI

### HOLLAND AND BELGIUM

The low wood and marsh lands near the lower Rhine were part of the Frankish Empire. In the time of Charlemagne, in accordance with his general policy, it was divided into *landschafts* and *gaus* ruled over by dukes and counts; each *gau* had its chief town, surrounded by a wall, wherein the count administered justice. The *gaus* were divided into marks or villages, in which a headman acted as judge in minor causes. The sovereignty over this territory alternated between French and German overlords. The northmen also invaded and desolated it. The piratical incursions of the vikings and the exposed situation of the country caused the people to gather into towns for mutual defense. These became sanctuaries, not merely for freemen, but serfs escaping from the estates of the nobles were also accorded freedom and protection. Trade, manufactures and other characteristics of town life developed, and the people soon built ships and profited from commerce and fisheries. From about A.D. 1000 the history of Holland begins to take definite form under its counts, whose allegiance shifted according to changing circumstances from the French kings to the German emperors, but with little real control from either.

William I, who died in 1224, granted charters to several of the towns, securing them in their liberties and providing for a regular administration of justice. Under Floris V the Hollanders took part in the strife between the French and English kings in aid of the latter, and in return gained valuable trading and fishing privileges by treaty. Marked characteristics of the early society were the independent and commercial spirit of the towns and the resistance of the claims of the nobility by the burghers. The counts from time to time were induced

to grant charters defining the rights of the towns. By about 1300 the imperial authority ceased to have any recognition, and Holland took its place as an independent state. Prior to this time for about 400 years the real power had been exercised by a vigorous line of counts, who appointed bailiffs over the country districts and *schouts* as judges in the towns. When matters of great interest to a city arose, the people were summoned into the public square by ringing the great town bell, and then they decided the question by vote. Justice was administered by a man's peers in accordance with the special customs of Franks, Saxons and Frisians. The supplies of the count were furnished by taxation, which fell mainly on the towns and early took the form of contributions in return for protection, not merely against foreign foes, but against the extortions of the lesser nobility, and in their corporate privileges against all. The counts usually sided with the burghers against the nobility. In the fourteenth century the towns joined the Hanseatic League, from which they were ejected in the fifteenth. During the last half of the fourteenth century civil strife over the succession to the countship and the struggle between the burghers and the nobles, who formed the parties of the *Kabbelaars* and *Hoeks*, the "Cods" and "Hooks," produced a state of continued disorder and much fighting. In 1436 Holland passed under the rule of Philip of Burgundy. From this time the charters of the cities and the liberties of the burghers were treated with contempt. Trade continued to thrive under more arbitrary rule, and Holland developed her fisheries and her shipping. In the art of printing and the study of the learning and arts of the ancients the people of the cities of the Netherlands took an early and leading part. The dukes aided in the collection of manuscripts and the founding of libraries and encouraged painters and authors in their work, especially in Flanders and the Brabant, which in these particulars were in advance of Holland. In 1477 on her accession to power the cities secured from the Dutchess Mary her sanction of the "Great Privilege," which affirmed the right of the cities and provinces to hold diets, to approve her choice of a husband and to have a voice in any declaration

of war. It declared that natives alone should hold high office; that no new taxes should be levied without the approval of the estates; established one high court for Holland, Zealand and Friesland; and made Dutch the official language. Though Philip of Burgundy convened the States General in 1464, it was not till after his time that they were allowed real power. In Holland the nobles collectively had but one vote, though all were permitted to sit in the assembly. Each of the large cities was also entitled to one vote. The president of the states, styled the *vogt*, became an officer of importance. Through marriage of Philip with Joanna of Aragon the sovereignty of the Netherlands was inherited by Charles V, king of Spain and German emperor. During his reign and that of his son and successor Philip was carried on that long and desperate struggle for civil and religious liberty by the people of the low countries against the cruel and bigoted Spaniard. Never has tyranny appeared more cold and heartless than that exercised in the name of religion by the bloody Duke of Alva and the murderous tribunals which tried by torture and punished with death the iconclasts and heretics. The charters of the cities and the rights of the States General were disregarded, and bloody executions by hundreds and by thousands followed. After opposition to the Spaniards had been crushed out in the provinces, the Dutch took their ships and preyed on Spanish commerce. In 1572 the "Water Beggars," as the naval force was termed, seized Briel at the mouth of the Meuse; the struggle on land was renewed and pushed till the Spaniards were driven out of Holland. In 1581 a meeting of the seven northern provinces was held at The Hague, which declared their independence and framed a constitution in accordance with the principles of the "Great Privilege" of the Duchess Mary, with William of Orange as sovereign. Under the able leadership of his son Maurice of Nassau the integrity of the country was preserved, and Holland grew in importance as a naval and commercial power, while the rich provinces of Hainault and Brabant were desolated and almost depopulated as a result of wars and Spanish misrule. Toward the close of the sixteenth century the Dutch seamen began to sail in distant

seas, and in 1602 the Dutch East India Company was formed. During the progress of the Thirty Years' war, 1618 to 1648, a separate treaty of peace was concluded with Spain, by which the independence of the provinces was recognized, and Spain abandoned all her claims.

In 1651 a great assembly of the provinces was held for the purpose of settling the system of government. The *Stadtholder*, whose office had been made hereditary in the house of Orange, was confirmed as commander of the military forces and exclusive head of the state. The legislative power was vested in the States General, made up of deputies numbering at times as many as 800. There was a permanent council of state and a chamber of accounts. Each province had its own *stadtholder* and estates. Each town had its chief minister and each great city a senate; that of Amsterdam containing thirty-six burghers, who were charged with the maintenance of order, the collection of taxes, and the administration of justice. At first the senate was elected for life by the whole body of freemen, but from the sixteenth century vacancies were filled by cooptation, and it became a close oligarchy. Other towns were similarly organized. The senate named the deputies to the States General. The right of making war and peace, concluding alliances, coining money and levying taxes, was vested in the States General. Though in the defense of their liberties and their country the Dutch had many long and desperate wars, their foreign policy was never aggressive, except for the extension of their trade. In this they met with great success and were able to obtain trade privileges in the east not accorded to other countries. Their greatest acquisition was of the rich island of Java, where they rule over a population many times that of Holland with very little friction with the natives. On the sea and in manufactures and trade the Dutch continued to gain their peaceful victories, and also carried on desperate struggles with Spain and England for naval supremacy.

No marked change in the organization of the state took place till the breaking out of the French Revolution. In 1775 a new constitution was formed, sweeping away the ancient

system and establishing in its place an elective representative government, but change after change followed in quick succession. In 1805 Bonaparte imposed a new constitution and a ruler, and in the next year made his brother king of it as a dependency of France. In 1810 he annexed it as a part of the empire. After the overthrow of Napoleon an assembly of notables met and recalled the prince of Orange, who had taken refuge in England, and chose him king under the title of William I. By the treaty of Paris Belgium was united to Holland under the hereditary sovereignty of the house of Orange. The king was given full executive powers and the initiative in proposing laws. He also appointed the council of state. The States General, composed of two chambers, was the legislative body, and similar representative assemblies were provided for each province. The union of Holland and Belgium was not the result of any popular movement, but was an incident of the settlement of the balance of power by the leading states of Europe at the conclusion of the Napoleonic wars. Belgium had never had any well defined national existence, having been border and disputed territory over which the rulers of France, Germany, Spain and Burgundy extended or were forced to yield their sovereignty according to the varying fortunes of war and diplomacy. There was never a close bond of sympathy between the Belgians and Dutch, the former being more closely allied with the French and the latter with the Germans. In 1830 a revolt broke out at Brussels, as a result of which there was a conflict between Holland and the people of Belgium. A cessation of hostilities resulted from the mediation of the great powers, and a convention of delegates chosen from the different provinces of Belgium assembled at Brussels, which declared for independence and a constitutional hereditary monarchy. In June, 1831, Prince Leopold of Saxe-Coburg was chosen king, under the condition that he would accept the constitution and swear to maintain the national independence and territorial integrity, which he did. Further conflicts took place between the two countries, and in 1832 France and England proceeded to enforce submission by Holland to the determination of the powers by

force of arms. In May, 1833, after much negotiation, a treaty was concluded providing for the settlement of boundaries and the separation of the two countries.

The present constitution of Holland is that established in 1814 as revised in 1848. The crown is hereditary by primogeniture in both male and female lines. The king is the executive head with power to declare war and make peace. He appoints the ministers, of whom there are eight: namely, of the interior, the *watersaat* (including trade and industry, railways, post offices, etc.) of justice, war, finance, marine, the colonies and foreign affairs. Though appointed by the king the ministers are accountable to the country for the conduct of affairs. The law-making power is vested in the king and States General, composed of two houses. The members of the upper house are chosen by the several provinces from those paying the largest direct taxes and contains thirty-nine members holding for terms of nine years, one-third of the members being chosen every three years. The members of the lower house are chosen by electoral districts by all citizens paying the requisite tax, varying from twenty to one hundred and sixty guilders. One member is chosen for every forty-five thousand people. There is also a council of state, appointed by the king, to which all legislation is submitted by the king before being presented to the states, and all enactments by the States General are submitted to the council before approval by the king. In each province there are similar assemblies having charge of local matters, made up of two houses chosen by the same electors. The presidents of these assemblies are appointed by the king. At the head of every commune is a communal council chosen by the people. The president of the council, the burgomaster, is appointed by the king for six years. There are eleven provinces and about 1130 communes. The administration of justice is by a system of courts, at the head of which is the Supreme Court sitting at The Hague, with inferior local courts in each province and commune.

The people of Holland enjoy complete religious liberty, freedom of speech, of association, and the right of trial by jury. No country furnishes a better illustration of the possibilities

of overcoming natural difficulties by combined effort and of turning adverse natural conditions to advantage than Holland. As formed by nature the district now included in the kingdom was exposed to inundation from the sea; much of it so low and marshy as to be unfit for cultivation and much actually below sea level. The soil was not of exceptional fertility in general, and much of it was sandy and poor. By a system of dykes more than 1550 miles in length, some of which are now utilized as beds for railways, not only have the low marsh lands been protected and reclaimed, but large districts have been gained from the sea and converted into fruitful fields. Though well supplied with rivers, the interior communication was early supplemented by an extensive system of canals. These and the flooding of lowlands by cutting the dykes have in times past materially affected military operations and been utilized in the defense of the country. From the earliest times the people have found it necessary to unite their efforts in overcoming natural forces as well as in fighting other people. This induced a spirit of association and also led to a perception of the essential principles to be observed in combining for common enterprises and sharing the benefits. The people of Holland were among the leaders in modern times in the study and elaboration of legal principles. Grotius, 1583 to 1645, is still regarded as a leading authority on international law. In the controversies with Charles and Philip of Spain the Hollanders argued most tenaciously for the observance of their charters and the protection of the laws, as well as for religious liberty, though in the condemnation of Barneveldt and Grotius and the execution of the former, as well as in many other judicial outrages, they showed that the spirit of cruelty and intolerance was not confined to one creed or sect. Still throughout all the bloody persecutions there was a marked disposition to proceed by established forms and to execute only after the forms of law had been complied with.

Combined effort was also necessary in carrying forward commercial enterprises, and the Dutch were among the earliest to take full advantage of the opening of trade with distant lands. By negotiations and a generally pacific policy they

established trading posts in the East and West Indies, Asia and America, which afforded their merchants advantages, from which they made great gains and took leading rank in the commercial world. The wars of Holland have with but rare exceptions been purely defensive. In these the people have exhibited a degree of stubborn bravery and of brilliant daring never surpassed by any people. It has been in all its history mainly a collection of towns, and the democratic spirit, engendered by close contact of many people engaged in industrial pursuits, has never been successfully crushed by any ruling power. On the other hand the aristocratic spirit has grown from generation to generation among the families possessed of great wealth, and the present constitution with its property qualification for voters shows the effects of this tendency. Commercial and industrial pursuits necessitate a degree of education not found among the peasant communities of Europe prior to the eighteenth century, and the people of Holland of the fifteenth, sixteenth and seventeenth centuries enjoyed as large a measure of education as any in Europe. The extent of the domination of the Dutch is not fully measured by their territorial possessions. They early learned the mastery gained by the investment of money and the acquisition of legal titles to property, and Dutch capital has been placed in America and elsewhere in such manner as to still further extend the power and influence of her capitalists and financiers. In perception and utilization of the advantages of combination and mutual help in peaceful enterprises no modern people and perhaps none of any age have excelled them. The educational system provides for general primary instruction but is not so thorough as that of Prussia. It is being improved. There are four universities of high rank, at Utrecht, Leyden, Groningen, and Amsterdam.

The constitution of Belgium adopted in 1831 exhibits more marks of modern influences than that of Holland. The latter has its traditions and survivals of ancient organizations, while the former is thoroughly modern.

The first title relates to the boundaries and division into provinces. The second is much like the bills of rights in the



constitutions of the American states, and contains among others the following important provisions:

Art. 6. "In the State there shall be no distinction of order. All Belgians are equal before the law; they alone are admitted to civil and military employments, with such exceptions as may be established by law for particular cases."

Art. 7. "Individual liberty is guaranteed. No one can be prosecuted, except in the cases specified by law and in the form which it prescribes. Save when taken in the act, no one shall be arrested except by virtue of an order issued by a judge. It shall be shown at the time of the arrest or not later than twenty-four hours thereafter."

Art. 8. "No one shall be deprived against his will of the judge whom the law assigns him."

Art. 9. "No penalty shall be established or enforced except by law."

Art. 10. "The home is inviolable. No search shall be made except in cases provided for by law and in the form which it prescribes."

Art. 11. "No one shall be deprived of his property except for public use and then only in the cases and in the manner provided for by law; and a just indemnity, to be ascertained beforehand, shall be paid."

Art. 14. "The freedom of religions, their public exercise, as well as the liberty of expressing their opinions on every matter, are guaranteed; reserving the right of repressing crimes committed in the exercise of these liberties."

Art. 15. "No one shall be compelled to observe, in any manner whatsoever, the rites and ceremonies of any form of religion, nor be required to observe days of rest."

Art. 17. "Public education shall be free, every preventive measure is prohibited. The repression of crime shall be regulated by law. Public instruction given at the expense of the state shall also be regulated by law."

Art. 18. "The press is free, no censorship shall ever be established, nor can writers, editors or printers be required to give bonds. When the author is known and resides in Belgium, the editor, printer or news agent cannot be prosecuted."

Art. 19. "All Belgians have the right to assemble peaceably and without arms, conforming themselves to the laws which may regulate the exercise of this right, but without being obliged to obtain permission beforehand. This regulation does not apply to open air meetings, which are entirely under police regulation."

Art. 20. "Belgians shall have the right to form associations; this right cannot be suppressed by any preventive measure."

Art. 22. "The secrecy of the mails shall be inviolable. The law shall determine who are the responsible agents in the violation of the secrecy of the mails."

Art. 24. "No previous authorization is necessary to begin suits against public officials for the acts of their administration, with such exceptions as may be made regarding the Ministers."

Title three distributes the governmental powers.

Art. 25. "All powers emanate from the nation. They shall be exercised in the manner established by the constitution."

Art. 26. "The legislative power shall be exercised collectively by the king, the House of Representatives and the Senate."

Art. 27. "The initiative shall belong to each one of the three branches of the legislative power. But all laws relative to the receipts or expenses of the state, or the contingent of the army must be first voted by the House of Representatives."

Art. 28. "The interpretation of the laws in an authoritative manner shall belong only to the legislative power."

Art. 29. "To the king belong executive powers within the limits prescribed by the constitution."

Art. 30. "The judicial power shall be exercised by the courts and tribunals."

Sessions of the Houses are required to be public, subject to a right to resolve themselves into secret committees. Each house judges of the returns and qualifications of its members. Appointment by the government to a salaried position vacates the member's seat. A majority constitutes a quorum. An absolute majority is required to pass a law, and the vote must be taken by roll call. Members are privileged from arrest.

Art. 47. "The House of Representatives shall be composed of Deputies elected directly by those citizens paying the census prescribed by the electoral law, which shall not exceed one hundred florins of direct tax nor be below twenty florins."

The number of deputies shall not exceed one for 40,000 inhabitants and to be eligible one must be a Belgian twenty-five years old. The term of office is four years and one-half are elected every two years. Members have a monthly salary of two hundred florins, except that those who reside in the city where the session is held get no salary. The senate is composed of half the number of the House, elected for eight years, one-half every four years, but entirely renewed in case of dissolution. Senators must be Belgians forty years old and pay at least 1000 florins direct taxes, including licenses in Belgium. They receive no salary.

The constitutional powers of the king are conferred on Leopold of Saxe-Coburg and made hereditary in the male line by primogeniture. In case of failure of such heirs the king may name his successor, with the consent of the two houses. The king cannot be chief of another state without the assent of the two houses.

Art. 63. "The person of the king shall be inviolable, his ministers shall be responsible."

Art. 64. "No act of the king shall have any effect, if it be not countersigned by a Minister who, by this act alone, makes himself responsible." "The king appoints ministers, confers grades in the army, and appoints officers of the general administration and foreign affairs, and such others as are authorized by law. He has no power to suspend the laws. The king commands the army and navy, declares war, and makes treaties. Treaties of commerce or imposing obligations on the Belgians must be ratified by both houses." "No cession, no exchange, no addition of territory can take place except by law." "The houses shall be in session each year, for at least forty days," and the king may convoke them on extraordinary occasions and may dissolve them simultaneously or separately. He may remit or reduce sentences, except those against the ministers. He may confer titles of nobility.

Art. 68. "No one shall be a Minister who is not a Belgian by birth or who has not received supreme naturalization."

Art. 77. "The law shall fix the civil list for the duration of each reign."

Art. 78. "The king shall have no other powers than those which the constitution formally confers upon him and the particular laws passed in pursuance of the same constitution."

In case of vacancy of the throne the ministers exercise the kings' powers, and the two houses provide a regency during the minority or disability of the king.

Art. 87. "No member of the Royal Family shall be a minister."

Art. 88. "The Ministers shall have a deliberative voice in one or the other house only when they are members thereof. They shall have free access to each of the houses and must be heard when they demand it. The houses may require the presence of the Ministers."

Art. 89. "In no case shall the verbal order or writ of the king relieve a minister from his responsibility."

Impeachments of ministers are tried before both houses in joint session. Articles 92 to 107 inclusive relate to Judicial Power.

Art. 94. "No tribunal nor civil court shall be established except by law. No extraordinary commissions or tribunals shall be established under any name whatsoever."

One Court of Appeals for all Belgium is established with no original jurisdiction except in the trial of ministers. Court proceedings must be public, except when dangerous to public order or morals and formally decided so to be. Jury trials are required in all criminal matters. All judicial officers are named directly by the king. Judges are appointed for life with salaries fixed by law, and prohibited from accepting any other salaried appointment. The powers and procedure of all courts civil and military are subject to regulation by law. Provincial and local institutions are regulated by law on the principles of direct election, local self-government in local affairs, publicity of council meetings, budgets and accounts.

Art. 110. "No tax for the benefit of the state shall be established except by law."

Art. 111. "All state taxes shall be voted annually."

A court of accounts, charged with the examination of the accounts of the general administration, with members named by the House of Representatives is established. Title V relates to the army and requires all matters relating to its numbers, method of recruiting and organization to be regulated by law.

Art. 128. "Every foreigner on Belgian territory shall enjoy the protection accorded to persons and property, with such exceptions as may be established by the law."

Art. 130. "The constitution can neither be suspended in whole or in part." The constitution may be revised after a declaration that there is need of revision and dissolution of the houses by a two-thirds vote of newly elected houses. This constitution is clearly the most advanced of all those retaining a king as head of the state. In practice time has demonstrated the wisdom of its provisions, and Belgium with the most dense population of any European country enjoyed a high degree of prosperity and had kept clear of destructive wars until invaded by the Germans in August, 1914.

In its provision requiring authoritative interpretations of the law to be made only by the law-making power, it is in advance of the American constitutions.

In each province there is a governor named by the king and a provincial council elected by the people. The affairs of the communes are also conducted by councils chosen by the people for terms of six years and a burgomaster appointed by the king from among the members of the council. There is a general primary school system, carried on at the expense of the communes, and secondary schools, part supported by the communes and others by the government. There are four universities, at Ghent, Liege, Brussels and Louvain. Besides these there are technical schools of high rank. In its benevolent and charitable institutions Belgium takes high rank and maintains many of various classes.

Much attention is paid to the needs of the working classes and to organizations designed to assist them. There are not only savings banks and mutual assistance societies, but charity workshops are provided at Ghent, Liege and other towns,

where indigent laboring men out of employment are relieved. These are not only means of temporary relief to the necessitous, but are designed as schools of instruction and to encourage industry among those who otherwise might become criminals or beggars. There are also manufacturing schools for girls, where they are taught to make fabrics, etc. Liberal provisions are made for the care of the insane, diseased and infirm and for temporary relief to the indigent.

The judicial system consists of a court of cassation at Brussels, composed of a president general, a president of the chamber and fifteen councillors. It has power to revise the action of inferior courts and reverse their decisions for errors of law. It is divided into two chambers, one for civil and the other for criminal causes. There are three courts of appeal, one each at Brussels, Ghent and Liege. In the capital of each province is a court of assize, composed of a councillor deputed from one of the courts of appeals and two judges chosen from among the presidents and judges of the primary tribunal where the court is held. This court has jurisdiction of crimes and the trial is by a jury of twelve, chosen from a panel of thirty by lot. In each arrondissement is a court of primary jurisdiction of civil causes and misdemeanors. The number of judges in these varies from three to ten. There are also tribunals of commerce in the principal towns. Appeals are allowed in causes involving 2000 francs or more. In the manufacturing towns there are councils of *prud-hommes*, composed of master tradesmen and workmen, who decide disputes between masters and workmen. All judges are appointed by the king for life and are incapable of holding any other office. The interests of the state are represented by advocates and procurators appointed by the crown. After the settlement of its disputes with Holland Belgium entered on a prosperous and peaceful career. It passed through the period of 1848, which shook so many European states, with but slight disturbance, and as a mining and manufacturing state has enjoyed a good degree of prosperity.

Great dissatisfaction has been manifested recently over the provisions of the electoral law which gives to Belgians over

thirty-five years of age if married or widowers paying five francs direct tax two votes each and to those having certain other property qualifications, official status or university diplomas three votes each. By this increased voting power a minority of the voters is given a majority of the votes.

## CHAPTER XXII

### SWITZERLAND

The territory included in modern Switzerland passed successively under the rule of Romans, Franks and Burgundians, without the development of any local national life. About A.D. 406 or 407 the Alemanni took possession of northern Helvetia, which their descendants still occupy. A little later the Burgundians settled about Lake Geneva and soon acquired mastery over southern Helvetia. The ancient Celts and Romans were not exterminated, but remained subject to the invading tribes. The Alemanni carried with them the Germanic customs of land tenure, using pasture and waste lands in common, and of determining all public matters in an assembly of the freemen. The rule of Charlemagne was extended over all Helvetia, and feudalism developed there substantially as elsewhere throughout western Europe.

The history of Switzerland, as well as the romantic legends connected with its political birth, are closely connected with the rise of the House of Hapsburg, whose early seat was in the modern canton of Aargau, with estates in the cantons of Luzern, Schwyz and Unterwalden. From ancient times the Germanic tribes were accustomed to act in concert in the assertion of their rights, and the feudal system did not have the effect of obliterating all such organizations in the mountain districts of Switzerland. Prior to the controversy with the Hapsburgs we find the people of Schwyz and of separate parts of Unterwalden organized into *Markgenossenschaften* and accustomed to meet and confer with reference to their common interests. In 1231 Henry VII issued a charter to the men of Uri, making them immediate vassals of the empire, promising them his protection, and setting them free from Count Rudolf of Hapsburg. In 1240 a similar charter was granted by Frederick II to the men of Schwyz the original of which is still preserved and reads:



"Having received letters and messengers from you, to prove and make known your conversion and submission to us, we accede to your express desire with gracious and affectionate good will; we praise your submission and loyalty not a little in that you have shown the zeal which you have always had for us and the empire, by taking protection under our wings and those of the empire, as you are bound to do, being freemen who must turn to us and the empire alone. Since therefore you have chosen our rule and that of the empire of your own free will, we receive you loyally with open arms and respond to your sincere affection with our single minded favor and good will, by taking you under our special protection and that of the empire, so that we will never allow you to be alienated or withdrawn from our sovereign rule and that of the empire."

This charter was not recognized by the Hapsburgs as taking away their rights, and it is difficult to see how the Emperor could rightfully cut the feudal bond, which already existed between Rudolph and his vassals. In the controversy between the Emperor Frederick and the Pope the people of Schwyz and Uri supported the Emperor, while Rudolph supported the Pope. Frederick II was excommunicated and deposed. Count Rudolph, during the conflict, called in the aid of the Pope to restore his vassals to their allegiance, and built the fortress of New Hapsburg near Lake Luzern, from which his rights were enforced.

In 1273 the fief of Schwyz passed from the Laufenburg line of the house of Hapsburg to that of Austria, and in the same year Rudolph was chosen emperor. By this chance the imperial sovereignty, assumed by the charter of Frederick, became united in the person of Rudolph with that of the house of Hapsburg. Rudolph governed it as an immediate possession, and it therefore ranked as "*unmittelbar*." During his reign an edict was issued, exempting the people from answering a summons to appear before any tribunal outside the valley, and providing that they should be answerable only to the emperor, his sons or the judge of the valley. Unterwalden was divided into a number of marks and contained the monastery of Engelberg and many free peasants. Rudolph died

July 15, 1291. On August 1 of the same year the three forest states concluded a league and executed their first articles of confederation, which, written in Latin on parchment, are still preserved. This document is of interest, not only as the work of the founders of the Swiss confederacy, but in the light it throws on the state of society and the conceptions of law and social order then entertained by the people. The following is a translation :

“In the name of God, Amen—

Honor and the public weal are promoted when leagues are concluded for the proper establishment of quiet and peace.

1. Therefore know all men, that the people of the valley of Uri, the democracy of the valley of Schwyz and the community of the mountaineers of the Lower Valley, seeing the malice of the age, in order that they may better defend themselves and their own and better preserve them in proper condition, have promised in good faith to assist each other with aid, with every counsel and every favor, with person and goods, within the valleys and without, with might and main, against one and all who may inflict on any of them any violence, molestation or injury or may plot any evil against their persons or goods.
2. And in every case each community has promised to succor the other when necessary, at its own expense, as far as needed in order to withstand the attacks of evil-doers and to avenge injuries, to this end they have sworn a bodily oath to keep this without guile and to renew by these presents the ancient form of the league, also confirmed by an oath.
3. Yet in such a manner that every man, according to his rank, shall obey and serve his overlord as it behooves him.
4. We have also promised, decreed and ordained in common council and by unanimous consent, that we will accept or receive no judge in the aforesaid valleys who shall have obtained his office for any price or for money in any way whatever, or who shall not be a native or a resident with us.
5. But if dissension shall arise between any of the confederates, the most prudent among the confederates shall come forth to settle the difficulty between the parties as shall seem right to them; and whichever party rejects their verdict shall be an adversary to the other

confederates. 6. Furthermore, as has been established between them that he who deliberately kills another without provocation, shall if caught, lose his life, as his wicked guilt requires, unless he be able to prove his innocence of said crime; and if perchance he escape, let him never return. Counsellors and defenders of said criminal shall be banished from the valleys, until they be expressly recalled by the confederates. 7. But if any one of the confederates by day or in the silence of the night, shall maliciously injure another by fire, he shall never be considered a compatriot. 8. If any man protect and defend the said criminal he shall render satisfaction to the injured person. 9. Furthermore if any one of the confederates shall spoil another of his goods or injure him in any way, the goods of the guilty one, if recovered within the valley, shall be seized in order to pay damages to the injured person according to justice. 10. Furthermore, no man shall seize anothers goods for debt unless he be evidently his debtor or surety, and this shall only be done with the special permission of his judge. Moreover every man shall obey his judge and if necessary, must himself indicate the judge in the valley, before whom he ought properly to appear. 11. And if anyone rebels against a verdict and in consequence of his obstinacy, any one of the confederates is injured, all the confederates are bound to compel the contumacious person to give satisfaction. 12. But if war or discord arise amongst any of the confederates, and one party of the disputants refuse to accept justice or satisfaction, the confederates are bound to defend the other party. 13. The above written statutes, decreed for the common weal and health, shall endure forever, God willing. In testimony of which at the request of the aforesaid parties, the present instrument has been drawn up and confirmed with the seal of the aforesaid three communities and valleys.

Done *Anno Domini M C C. L XXXX Primo*. in the beginning of the month of August."

A little more than two months later Uri and Schwyz entered into a separate alliance with Zurich for three years. In 1294 an assembly of the men of Schwyz was held, at which it

was resolved that no one should be permitted to sell or give land to monasteries in the valley or to strangers outside, under heavy penalty, and requiring the monasteries and foreign owners to pay taxes on their holdings the same as residents, and not impose them on their tenants. During the reign of Albrecht I the cantons were governed by native *Landammannen*. The critical investigations of historians have cruelly swept away the basis for the poetic tales of Tell and his compatriots and the period when Swiss liberty is pictured as taking birth. In place of these thrilling tales it is said that the period of the reign of Albrecht I was uneventful, as far as the Swiss cantons are concerned. Albrecht refused to confirm the charters, but those of Uri and Schwyz were confirmed by Henry VII, and a charter was also granted to Unterwalden. These charters were an assertion by Henry of Luxemburg, as emperor, of sovereignty in opposition to the claims of the Hapsburgs. The question at issue was not whether the forest states were free or subject to the Hapsburgs, but whether they were "*mittelbar*" i.e. subject to the Hapsburgs as Hapsburgs or "*unmittelbar*" and subject only to the emperor whether he were a Hapsburg or other prince.

In January, 1314, a band of Schwyzers attacked the Abbey of Einsiedeln, which was under the protection of the Hapsburgs, and after damaging much property took away the monks as prisoners and drove off the cattle. This raid resulted from a controversy over the use of lands claimed by both parties. On Nov. 15, 1315, a conflict occurred at Morgarten between the confederates and a force under Duke Leopold, in which the latter sustained a crushing defeat. The battle was remarkable in the fact that a body of mounted and armored knights was defeated by peasants on foot. On Dec. 9, 1315, a meeting was held and the league of the cantons renewed on the same lines, with the additional provisions that: "those lords or that lord who shall attack one of the Lands with violence, or force unjust exactions; such a one or such men shall not be served as long as they have not given satisfaction to the Lands," and also "We have also agreed that none of the Lands nor any among the confederates (*Eidgenos-*

sen), shall give an oath or pledge to a foreigner without the advice of the other Lands or Confederates." Three years later the Duke of Austria renounced all sovereign rights over the states, but retained jurisdiction over his estates, and peace was concluded. On Nov. 7, 1332, a perpetual league was concluded between the three forest cantons and Lucern. This compact recognized the rights of Austria in Lucern, and of the Emperor over Uri, Schwyz and Unterwalden, but provided for mutual assistance in case of aggression from any quarter and for arbitration of controversies among the confederates. Lucern had been under ecclesiastical rule and had also obtained a charter. In 1291 Rudolph of Hapsburg bought for his sons all the possessions of the Abbey of Morbach. Through this purchase Lucern passed to the Hapsburgs, and in 1315 the citizens were compelled to take part in the battle of Morgarten against the Forest Cantons.

At this time Zurich was a city of considerable importance and classed as a free city. The form of the city government was, however, oligarchical. The people were divided into classes as nobles, free burghers and working men. The governing body was a council composed of thirty-six burghers, divided into three groups of twelve each, a group governing one third of a year. The working class had no vote nor share in the city government. In 1336 there was an uprising against the abuses of the council, led by Rudolph Brun, who, though of a leading family and a member of the council, became the champion of the common people. A new charter was formed called the "First Sworn Brief," which provided that the whole population should swear to serve and obey the *Bürgermeister* in all things, without however, disparagement of the rights of the Emperor and the two church establishments of the city. The *Bürgermeister* must swear to protect all citizens to the best of his ability without distinction of rich or poor. A new council was to be elected by two classes, the first included the nobles and burghers who lived on their incomes, or were in business as merchants, woolen-drapers, money changers, goldsmiths and salt dealers. These together formed an association, called the *Konstaffel*. The workingmen made up

the second class and were grouped into thirteen guilds according to occupation. They were organized into companies and drilled for the defense of the city. Over each was a guildmaster, elected semiannually by the guild, who became ex-officio a member of the council. The *Konstaffel* chose an equal number, making the full council twenty-six in number. On important occasions all the citizens were assembled for consultation. The *Bürgermeister* was chosen for life. Following this change of organization there was trouble with the Count of Rappersweil and his followers, and on Feb. 23, 1350, an attack was made on Zurich under the lead of the son of a Count of Rappersweil who had been slain in a fight at Grinau. The attempted surprise resulted in the capture of the young count and his principal followers, thirty-five of whom were barbarously executed. Brun, who had been chosen *Bürgermeister*, took Rappersweil, destroyed the castle and devastated the possessions of the Hapsburgs about the head of the lake. As a result Zurich was confronted with the forces of Austria and needed help. On May 1, 1351, a perpetual league was concluded between Zurich, Lucern, Uri, Schwyz and Unterwalden, each promising mutual assistance, but allowing the members to form separate alliances, and pledging the forest states to help maintain the existing form of government in Zurich, if requested. War followed between the Austrian duke and the confederates. In June 1352 Glarus joined the confederacy, Lucern not becoming a party to the compact. On June 27 Zug, which had been taken possession of by the confederates, also joined the league. After an indecisive campaign peace was concluded with Austria, by which the Duke retained Glarus and Zug.

The city of Bern was also an *unmittelbar*, free city, claiming charter rights under what is called the *Goldene Handveste*, claimed to have been granted by Frederick II in 1218, allowing immunity from imperial taxation, except an annual home-  
stead tax, with the privilege of electing all its municipal officers, exemption from military service so far away that they could not return at night, and containing many other regulations of municipal affairs. In 1295 certain reforms

were made. In addition to the *Schultheiss* and council of twelve, a board of sixteen was chosen from the four wards of the city, which was empowered to elect a common council of 200. Artisans, theretofore unrepresented, were eligible to the board and council. Guilds were forbidden. Prior to this time Bern had vacillated in its allegiance between Savoy and Hapsburg. In 1323 Bern sought and gained the alliance of the Forest States and in the following years waged war and took a number of places in the neighboring district. In June 1339 the battle of Laupen was fought and won by the confederates, and in 1342 peace was concluded, which was followed in 1355 by the admission of Bern into the Confederation. A document similar to the former ones was drawn up, but not making a close league between the cities. Charles IV, having quarreled with Rudolph IV of Austria, confirmed the charters and leagues of the States, and in 1364 the latter recovered Zug from Austria. In 1375 there was an invasion of a large army of mercenaries under Ingram de Courcy, which entered Argau and laid waste the country. The attack was directed rather against Austria than the Swiss but, as usual, innocent people rather than the hostile ruler suffered. The people, however, rose, surprised and defeated a large detachment and soon drove the remainder from the country. This was called the Gugler invasion. After a brief interval of peace quarrels were renewed with Austria. All the members of the league except the Forest Cantons and Glarus joined the Swabian Confederacy. Lucern refused to pay customs to the Austrian bailiff and received and protected peasants from the ducal estates. The bailiffs seat at Rothenburg was destroyed. Zug attacked the castle of St. Andreas, Zurich marched against Rappersweil and the men of Schwyz took Einsiedeln. A summons was sent to the Swabian cities, to which they made scanty response.

In June 1386 Leopold III, who had succeeded to the western possessions of the Hapsburgs, organized an expedition to crush the confederacy. Many noblemen of the neighboring country came to his aid, and he also hired several bands of mercenaries. With a force of 6,000, including many armored

knights, he made a feint of an attack on Zurich, but it was his purpose to strike Lucern as the heart of the Confederacy. With overweening confidence his forces moved along, unprepared for an attack, when on July 9, 1386, they were met at Sempach by about 1,600 men of Lucern and the Forest States. The battle which ensued, though not involving great numbers, is one of the most notable in history from the fact that a very inferior force of peasants and burghers, fighting without armor, defeated so large a force of armored knights and professional soldiers. Leopold was killed and his army completely routed. Some circumstances favored the Confederates. Their attack was a surprise, on ground unfavorable to horses, so that the knights were forced to dismount, and, the heat being intense, their armor was such a serious encumbrance as to outweigh the protection it afforded. The tale of the heroism of Winkelried and the share he contributed to the victory is a subject of controversy among historians, though not so thoroughly discredited as the legends of Tell. The results flowing from this remarkable battle were momentous, for it finally broke the power of Austria in the Confederation. The men of Glarus at once rose against Austria and in April 1388 defeated at Näfels the army sent against them, though the Austrian odds were much greater than at Sempach. In 1389 a peace for seven years was concluded, which secured the confederates in all their possessions, and on July 16, 1394, it was extended for twenty years. Only a few months after the battle of Näfels the Swabian cities met a crushing defeat at the battle of Döffingen, and their league came to an end.

At the head and front of the confederacy, thus far, had been the men of the Forest States. Uri, Schwyz, Unterwalden and Glarus were still democracies of the ancient German type. The people assembled in the open air as the *Landgemeinde*. They chose a council to transact current business, but the power of ultimate decision, the sovereign authority, rested in the whole body of citizens, and it was their united mental and physical energies that produced such surprising results. The rule of the cities was more oligarchical in character, the



chief executive officer and the council acting for the whole. Bern, the most important of the cities, was also the most oligarchical in its constitution. The chief magistrate, called the *Schultheiss*, and council of twelve from the aristocracy had held exclusive authority till the reform before mentioned. The *Pfaffen brief*, subscribed by all the confederates except Bern and Glarus, contained among others the following important provisions. 1. All vassals of Austria, whether clergy, laity, nobles or commoners, taking abode in the confederation, must swear fealty to the Confederates. 2. No foreign ecclesiastic, dwelling in the Confederacy, should summon others before foreign tribunals, except in ecclesiastical or matrimonial cases. 3. A priest violating this rule should be outlawed. 4. The Confederates guaranteed the safety of all roads from the *Stubende Brücke* on the St. Gothard route as far as Zurich.

The covenant of Sempach (*Sempacher brief*), was executed in 1393 by the eight confederates, and also by Solothurn, and recited that,

"Whereas they had fought and won against Austria they now desired to make provision for future attacks" and provided, 1. That no confederate should break into the house of another with intent to plunder either in war or peace. 2. That the safety of merchants in persons and goods be guaranteed. 3. Those taking part in future military expeditions were to stand by one another, whatever might happen, like true men, as also their forefathers did. 4. Should anyone desert in war or break any of the rules of this covenant and his guilt be attested by at least two honorable men, he should be promptly punished in his person and goods, according to the law of the state to which he belonged. 5. The wounded were to stay by their comrades until all danger was past nor be considered deserters if unable to help. 6. Thereafter no man should be allowed to take plunder until the fight was at an end and the captains gave permission, and all spoils should be equally distributed to every man a share. 7. All monasteries and churches should remain inviolate, unless the enemy took shelter in them. 8. Women should not be attacked unless they warned

the enemy by an outcry or themselves fought, in which case they should be punished as they deserved. 9. None of the contracting parties should provoke war wantonly without due cause or warning as provided in the various leagues.

This compact provided no governmental machinery for common ends, but nevertheless was a substantial bond. It advanced principles of humanity, for the violation of which war should afford no excuse. Though by no means free from the savagery of the times, in their provisions for arbitrating disputes among themselves and mitigating the horrors of war the confederates exhibited a morality far in advance of the general spirit of the time.

The monastery of St. Gallen, founded during the seventh century, had grown into a powerful ecclesiastical establishment with large estates. The abbots exercised authority over the estates of the monastery, while the supreme authority over the district was in the hands of an imperial bailiff. In 1345 the Abbott was appointed baliff over the city of St. Gallen and the villages of the province. In 1377 five villages, united under the name of Appenzell, joined the Swabian league and created a council of thirteen, elected by the people. In 1401 an alliance between these villages, St. Gallen and other communities suffering from the rule of a tyrannical abbot, formed a league and attacked the possessions of the Abbot. In 1403 Appenzell was taken under the protection of Schwyz and received an *Amman* from it as chief magistrate, and proceeded to commit further depredations on the abbot's estate. He gathered a considerable force, which met a crushing defeat at Vögelinsegg. Again, on June 17, 1405, having called in the aid of Austria, an effort was made to compel submission to the Abbot's rule, but the mountaineers were again victorious and assuming the offensive overran the whole country southeast of the Boden See. This country they were unable to hold, and in 1407 they sustained a defeat.

In 1411 a new alliance was formed between Appenzell and Schwyz, with all the other members of the confederacy except Bern, by which, however, Appenzell occupied a subordinate position under protection of the other states. In 1412

St. Gallen was also added to the league. In 1388 the people of some of the communes of upper Valais, exasperated by the murder of the Bishop, had inflicted a crushing defeat on Count Amadeus VII of Savoy and the nobility allied with him, and in 1403 the Bishop of Sion and the people of the Valais entered into "*Burg und Landrecht*" with Uri, Unterwalden and Lucern. Here it will be observed that the Bishop and the people were opposed to the nobles. In 1403 Uri and Obwalden invaded and established their authority in Ticino as a subject province. In 1412 the peace with Austria was renewed for a further period of fifty years. In 1415 under instigation of the emperor Sigismund, who was at war with Frederick of Austria, the members of the league attacked the Aargau and besieged the stronghold called the *Stein*. While the siege was being pressed, peace was concluded between the emperor and the duke, and the confederates were ordered to withdraw, but they refused, took the *Stein* and divided the territory among the members of the confederacy. Uri however took no share. Disputes having arisen between Schwyz and Zurich over the estate of the Count of Taggenburg, Zurich formed an alliance with the ancient enemy, Austria, and the confederates declared war. In a battle before Zurich the confederates were successful. After a brief time an overwhelming force of mercenaries, called the Armagnacs, came into the country and attacked about 1,300 of the confederates near Basel on Aug. 21, 1444. A most desperate fight ensued, in which the latter were nearly exterminated. The effect of the battle, however, was to check the advance of the victors. In 1450 the principle of arbitration was invoked, and the Schultheiss of Bern chosen final arbiter between the contending parties. He declared the allegiance between Austria and Zurich null and that by the perpetual league Zurich was still bound to the confederation. On the other hand Zurich was given back her territory, except a small portion of the Taggenburg estate.

In 1474 the confederation was drawn into a war with the Duke of Burgundy, in which it defeated him in two great battles and took a great quantity of spoils. Differences hav-

ing occurred between the Forest States and the cities, a diet was called to meet at Stans in Unterwalden to settle matters. It met in 1481 and after stormy scenes finally reaffirmed the Covenant of Sempach and *Pfaffenbrief* with an additional covenant against dangerous assemblies in the towns leading to tumults. It was further provided that the covenants should be sworn to every five years. In 1499 the confederates became involved in a war with the Emperor. After a brief struggle the matters in dispute were referred to arbitration, and from that time the confederation became practically independent, though not formally recognized as being so. In 1500 Basel and Schaffhausen were received into the confederation as the eleventh and twelfth members. The Swiss had reached the stage of a recognized military power, and Swiss mercenaries were eagerly sought by European potentates. The confederation also entered upon a struggle with the French King for Italian possessions, which resulted in their defeat at Morignano in 1515. Following this war Appenzell was admitted into the confederation as the thirteenth state. Though the confederation had waged such successful wars, it was still without any central government. All concert of action was attained by conferences of representatives of the different states. The diets, which were held by delegates, were not strictly legislative or sovereign bodies, but rather assemblies of ambassadors, who could only act in accordance with instructions. Nevertheless the country does not seem to have suffered greatly from the want of a stronger government. Common needs and purposes formed a stronger bond of union than any accepted system would under other circumstances. No error is more common or more harmful than that the acceptance of an official system necessarily adds greatly to the welfare of the people. A government is not firmly established until the people generally are educated to regard it as having rightful authority and to yield obedience to the rules and principles on which it is founded. When this condition is attained, the great majority of the people observe and obey these rules and principles without the direct application of the power of governing agencies. Compulsory

measures are only required for the minority who refuse compliance. The bond of the feudal system was the oath of the vassal to serve his lord and the promise of the lord to protect the vassal. When the relation was entered into, its obligations were distinctly taught and assumed as a personal duty, deliberately accepted, and to the performance of which the vassal was bound by his oath. In the absence of the compact or of any accepted relation, the vassal would have had the same natural right to lead and command as the lord, and in a company of freemen would as often be chosen by his fellows to do so.

The peculiarity of the Swiss confederation, distinguishing it from most if not all other confederations, was that it was an *Eidgenossenschaft*, an oath bound association, in which the individuals composing the democratic states entered into a written compact, agreeing to do certain things for mutual protection, and to be bound by certain rules which were deemed conducive to the general welfare, and took an oath that they would perform the compact. This was in effect an oath of mutual support in defense of their rights, instead of an oath of fealty to an overlord. The bond which thus tied equals to each other proved in the early struggles even stronger than the feudal bond. It was superior in its moral principles. It appealed both to the conscience and to the intelligence of all the freemen, and the voluntary compliance yielded to the compact was such as to make a few peasants and burghers the superiors in war of the feudal lords of Austria, and even of Burgundy, France and the empire. It is also worthy of notice that the leading necessity for arbitrary central authority, vested in one ruler, is to raise, equip and command armies in war. The need of a single head, vested with power to decide and act promptly, has been almost universally recognized, yet the superiority of the free confederates over the feudal lords and their retainers was demonstrated over and over on many hard fought battle fields. There is much similarity between these early contests and those of the Greeks against the Persians. Perhaps the most significant fact connected with this matter is, that a force of men fighting a defensive war,

which each man regards as his war, and when he has been educated to regard it as his religious duty to do his utmost for himself and his sworn comrades, is superior to another force of equal numbers which merely obeys a constituted leader, and that education in and voluntary assumption of social duties are of the highest value in the organization of states.

Among the most noted leaders of the reformation was Ulrich Zwingli. He was quite as much a political as a religious reformer, and he preached vigorously against the sin of fighting the battles of despots for pay. Zurich accepted his doctrines, and the other Swiss cities inclined toward the reformation. The Forest Cantons remained Catholic. War between the opposing factions threatened in 1529, but a peace was concluded which allowed religious freedom to each state, not to each person. In 1531 Zurich having cut off supplies of food from the Forest States and suppressed the monastery of St. Gallen and appropriated its lands, civil war broke out and Zurich was defeated. A second peace followed, which recognized the right, not only of states, but of each parish or commune, to determine its form of worship. The League split into two camps. The Catholics held Uri, Schwyz, Unterwalden, Lucern and Zug, which in 1529 as the "*Christliche Vereinigung*" had entered into an offensive and defensive alliance with the King of Hungary, and Freiburg, Solothurn, Inner Rhoden, Appenzell and St. Gall, which gave them seventeen out of a total of twenty-nine members of the diet as then constituted. The reformers held Zurich, Bern, Basel Schaffhausen, Ausser Rhoden (Appenzell) with Graubunden. Thurgau and Glarus were divided. Prior to the reformation Geneva was a republican city, over which the count of Savoy and the Bishop claimed seigniority. In 1519, at the instigation of the republican elements in the city, a temporary alliance was formed with Freiburg and Bern and another in 1526 for twenty-five years. In 1536 by the aid of an army from Bern, Geneva was liberated from the rule of the Bishop and Count of Savoy. The people had been converted to the principles of the reformation, and a new alliance was concluded. Geneva became the field of the labors of William

Farel and John Calvin, and under their leadership adopted a rigid and intolerant system, which was enforced with the burning of Michael Servetus at the stake for heresy and other cruelties. Secret spies and torture were called to the aid of those who professed a reformation of the Church of Rome.

In October 1586 the Golden League was formed by the Catholic states of Uri, Schwyz, Unterwalden, Lucerne, Zug, Freiburg and Solothurn for the maintenance of the true faith in their territories and engaging to help each other, if attacked by external enemies, notwithstanding any other league new or old. In 1612 Zurich and Bern entered into an alliance with the Margrave of Baden. Though religious dissensions had disrupted the Confederation, unlike their co-religionists throughout Germany, the opposing factions did not join in the Thirty Years' war, but maintained an attitude of neutrality. They were unable to escape some complications with Austria, which conquered the Prattigan, and the Spanish and French in the Valtellaine.

The treaty of Westphalia, concluded in 1648, terminated the Thirty Years' war and recognized the independence of the Confederation in the following language, "Aforesaid city of Basel and the remaining Cantons of the Helvetians are in possession of as good as full freedom and exemption from the empire and are in no way subject to the *Dikasterien* and courts of the empire."

The hiring of mercenary troops to foreign princes, the payment of pensions to the states for the privilege of hiring mercenaries, the rulership of the Aargau, Thurgau and other lands taken by force of arms and ruled as dependencies by the cantons, the exercise of authority by representatives of the states, by bailiffs and captains, tended to develop the aristocratic spirit, not only in the cities, but in the Forest Cantons as well. With more intercourse and closer relations with neighboring states and with the growth of individual fortunes social distinctions and oligarchical tendencies developed. The democratic cantons exercised over their dependencies the rights of the feudal lords whom they had displaced, and with no less rigor. In 1653 the peasant's war broke out in the

Entlebuch, a valley subject to Lucern, and spread over the whole Confederacy. Popular assemblies were held and protests made against the tyrannies of the local governments. Armed encounters followed between the peasants and the authorities, resulting in the defeat of the former and the barbarous execution of Leuenberger and Schibi their principal leaders.

In 1663 Louis XIV of France renewed a treaty, first made with the Confederation in 1602, and thereby obtained their pledge to supply him at least 6,000 and not more than 16,000 men annually in return for 3,000 francs to each canton annually, regular pay for the mercenaries and certain commercial privileges. The aristocratic tendencies were most marked in the cities of Bern, Lucern, Freiburg and Solothurn, where there were no guilds sharing in the government as at Zurich, Basel and Schaffhausen. They were promoted there as everywhere by the principle of the inheritance of wealth and power. The burghers, who administered the municipal government, refused to admit new members to burgher rights, and a small class secured possession of all the offices and adopted the principle of coöptation, by which they supplied all vacancies by appointment and without any consultation with the body of the citizens. In Bern of 360 burgher families eighty held all the offices.

It is most remarkable that Swiss territory should have become the dwelling place of so many of the great men of the eighteenth century, Voltaire, Rousseau, Gibbon, Madame de Stael, Lavater and Pestalozzi. On Swiss soil there was an awakening to the falsity of the claim of the descendants of robber barons to rule by right divine, and to the manifest right of all men to liberty, not only of conscience, but of conduct. Switzerland, though not the field of the great struggle for liberty which took form in the last part of the eighteenth century, was a school in which the principles governing social relations were studied with great profit and profound influence on all western Europe. In 1759 there was formed the *Oekonomische Gesellschaft* at Bern, said to have been the first agricultural society in Europe. It promoted improved



systems of agriculture. In 1762 the Helvetian society, with the Baths of Schinznach as the place of its meetings, was formed for the study and discussion of social problems and to promote reforms in public affairs.

There were various attempts to gain relief from the tyranny of the oligarchies, which had developed not only in the cities but in the Forest Cantons, in Appenzell against Landammann Zwellweger, in Zug against Zur Lauben, in Schwyz against the family of Reding, whose wealth, acquired in foreign service, was made the basis of claims of right to rule at home. In Geneva there were many revolts and efforts to throw off the rule of the oligarchy.

In Bern the democratic leader Henzi and two companions were executed, as was Waser in Zurich. The lands, wrested from feudal lords by the Confederates and held as subject districts, revolted against the oppression of their rulers: Wilchingen, in Schaffhausen, Entlebuch, the Vaud, the Toggenburg and Val Levantina, all strove for relief, but without success. Those claiming an hereditary right to take the proceeds of the labors of others without compensation maintained their claims by force and visited barbarous punishment on those who asserted their natural rights.

In 1790 the Helvetian Club at Paris was formed by exiles from Swiss districts and issued pamphlets teaching the rights of man, which they succeeded in circulating in spite of the efforts of the Cantonal authorities to suppress them. Disturbances soon followed. In 1790 Lower Wallis rose against the upper district. In 1792 the "Raurician" republic opposed the prince bishop of Basel and became the French department of Mont Terrible. Napoleon sought an occasion for the occupation of Swiss Cantons, and when exiles from Vaud and Freiburg called in the directory to protect the liberties which had been guaranteed by France, an excuse was found and troops were sent into Mulhausen, Bienne and the territory of the Bishop of Basel and into Vaud where the "Lemanic Republic" was proclaimed. In 1798 a large French army entered the country and took Bern, which alone offered serious resistance and yielded only after a decisive battle. After this

all the other states yielded to French dictation. On April 12, 1798, a new constitution, called the Helvetic, was promulgated by authority of the French Directory, which declared the body of all the citizens sovereign, established a representative government, guaranteed religious liberty and freedom of the press, abolished all hereditary titles and powers and all feudal tenures of land. Two legislative bodies were created, a Senate of four delegates from each canton and a Grand Council of representatives elected by the people. The executive power was conferred on a Directory of five members, to be chosen by the Senate and Council jointly. Four ministers at the head of administrative departments were provided for. A supreme court, consisting of one judge from each canton, was created. Each canton was given a prefect, a board of administration and a local court. All distinctions between the cantons and their subject districts were abolished, and the people of all Switzerland were placed on an equal footing. This constitution was accepted by all but the three forest cantons, which resisted, but a strong French army after severe fighting enforced submission and on July 14, 1798, deputies from the eighteen cantons met in Aargau and took the oath of allegiance to the constitution. Nidwalden alone refused to allow its citizens to take the oath and made a desperate resistance, exhibiting the ancient Swiss spirit, but was overcome by superior numbers. Much new legislation was passed by the Senate and Council. There was an abolition of all the vexatious trade restrictions between the cantons with which they were burdened, and free trade was established throughout the republic. In August, 1799, an offensive and defensive alliance was formed with France. During that year Switzerland became a battleground for the contending armies of France, Austria and Russia, and suffered much from their presence. The Helvetic constitution did not prove acceptable to the people, and divers new drafts were proposed in 1801 and 1802. In 1802, following the withdrawal of French troops, there were uprisings against the authorities, and in the ensuing conflicts the insurgents were generally successful. Napoleon put an end to the strife by issuing a proclamation inviting the

Swiss people to send delegates to confer with him concerning a new constitution. On this call about sixty delegates went to Paris, and on Feb. 19, 1803, a new constitution, styled the Act of Mediation, was signed and promulgated. It was a compromise between the old confederation and the Helvetic constitution. It reinstated the old Diet with enlarged powers, and restored the sovereignty of the cantons. Six cantons were selected, namely Freiburg, Bern, Solothurn, Basel, Zurich and Lucern in which the diet was to be held in annual rotation, the *Schultheiss* or *Bürgermeister* of each capital becoming in turn President of the confederation with the title of *Landamann* of Switzerland. Each canton sent one delegate to the Diet, but cantons having more than 100,000 inhabitants had two votes. The cantons separately had all powers not delegated to the Federal authorities. The *Lands gemeinde* in the democratic cantons were restored, and in the other cantons the government was put in the hands of the great council as the legislative body and the small council as the executive, and a property qualification required for voters and officials. No canton was allowed to form a separate political alliance. Full liberty was given all citizens to settle in any canton, and no privileged class, except as stated, or subject lands were allowed. With the downfall of Napoleon Switzerland, in common with the rest of Europe, exhibited reactionary tendencies. On Dec. 22, 1813, Bern declared the Act of Mediation void and reinstated the surviving members of the old council, who had served before the revolution. A week later the Diet also denounced the Act, and the work of forming a new constitution was undertaken, but was not completed till 1815, under the supervision of the great powers, which, at the Congress of Vienna on Nov. 20, 1815, guaranteed Switzerland independence and the inviolability of her territory. On Aug. 7, 1815, the twenty-two states comprising the confederation signed the new *Bundesvertrag*. Valais, Geneva and Neuchatel were now admitted as states on an equal footing. The new pact regulated the contributions of men and money to the Confederation, and provided a Federal Board of Arbitration to settle internal dis-

putes. The Diet was made of delegates limited to one vote for each canton. Bern, Zurich and Lucern were made capital cities in rotation. The office of *Landamann* was abolished and no central authority was created to enforce the decrees of the Diet. Church and monastic establishments were guaranteed protection. Following the adoption of this scheme of loose confederation the cantons returned to much of their ancient system. Censorship of the press and the mercenary system are among the worst of the results of the reaction.

The spirit which brought about the French Revolution of 1830 was also at work in Switzerland, and meetings were held in many of the cantons, demanding reforms and increased respect for popular rights. In that year nine of the cantons revised their constitutions in response to these demands. During the following year there were conflicts in Basel, Schwyz and Neuchatel, resulting in the first named in a division into two half cantons. Attempts to revise the federal constitution failed. On March 17, 1832, Luzern, Zurich, Solothurn, St. Gallen, Aargau and Thurgau joined in what was styled the *Siebenerkonkordat*, guaranteeing the maintenance of the constitutions of the members. On November 14 the following conservative cantons Uri, Schwyz, Unterwalden, Baselstadt, Neuchatel and Valais, withdrew from the diet and united in a league; thus dividing the Confederation into hostile sections. From this time on dissensions between the reformers and conservatives, the Catholics and the Protestants, continued, the cantons arranging themselves in opposing factions according to the prevailing sentiment in each. In 1843 Luzern, Uri, Schwyz, Unterwalden, Zug, Freiburg and Valais, Catholic states, formed the *Sonderbund* and in December 1845 signed an Act of Secession, appointed a council of war, and pledged each other mutual support in case of attack. War did not result till the fall of 1847 and was then short and conducted with a most commendable effort to reduce the brutalities of war to a minimum. Dufour, the commander of the federal forces, was both a humane man and an able, energetic general. A campaign of twenty days settled the issue in favor of the Federal side. On November 30, after the war

was over, the French ambassador presented a collective note of the great powers, offering mediation between the contending factions, but the offer was rejected on the ground that the issue had already been decided. In 1848 a constitution was adopted. Under it a man settling in a canton other than that of his birth acquired citizenship after two years, but was excluded from communal rights. A Federal legislature was established, made up of two houses, the *Stände Rath*, composed of two deputies from each canton, and the national council, elected for terms of three years, one for every 20,000 population or major fraction. The *Bundesrath* of seven members elected by the assembly, was the executive head, and their chairman was styled President of the confederation. The *Bundesgericht* of eleven members was the supreme court. All enlistments of mercenaries in foreign service were forbidden by vote of the assembly.

On Jan. 31, 1874, a revised constitution was adopted by the two houses and on May 29 was ratified by vote of the people. It is unique in so many of its provisions that it is well worth careful study. The first seventy articles define the purposes of the Confederation, the relation of the cantons to it and to each other, and many other matters difficult to summarize.

"Article 1. The peoples of the twenty sovereign cantons of Switzerland united by this present alliance namely" (names) form in their entirety the Swiss Confederation.

"Art. 2. The purpose of the Confederation is to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the confederates and to foster their common welfare."

"Art. 3. The Cantons are sovereign, so far as their sovereignty is not limited by the Federal Constitution, and as such they exercise all the rights which are not delegated to the federal government."

"Art. 4. All Swiss are equal before the law. In Switzerland there are neither political dependencies nor privileges of place, birth, persons or families."

Art. 5. Guarantees to the cantons and their citizens

their territory, liberty and constitutional rights. Article 6 requires the cantons to ask the Confederation to guarantee their constitutions, to be accorded on condition that they are not repugnant to the Federal Constitution and have been ratified by the people. Article 7 prohibits the cantons from forming separate alliances, though conventions with regard to legislative, administrative and judicial subjects are allowed subject to approval of the Federal authorities.

"Art. 8. The Confederation has the sole right of declaring war, of making peace and of concluding alliances and treaties with foreign powers, particularly treaties relating to tariffs and commerce."

Art. 9. Preserves the rights of the cantons to make treaties respecting public property and border police intercourse, not conflicting with the rights of the confederation or other cantons. Article 10 relates to intercourse with foreign governments. "Art. 11. No military capitulations shall be made."

Art 12. Prohibits officials from receiving pay, gifts or titles from foreign governments.

"Art. 13. The Confederation has no right to keep up a standing army. No Canton or half Canton shall, without the permission of the Federal government, keep up a standing force of more than three hundred men; the mounted police not included in this number."

"Art. 14. In case of differences arising between Cantons the States shall abstain from violence and from arming themselves; they shall submit to the decision to be taken upon such differences by the Confederation."

Arts. 15, 16 and 17 provide for mutual aid in case of foreign attack or internal disturbance.

Article 18 binds every Swiss to perform military service and Arts. 19-20-21 and 22 provide for the organization of the army under the general control of the Confederation, but entrusting certain duties to the cantonal officials.

Art. 23 authorizes the Confederation to construct public works which concern Switzerland or a considerable part of it. Art. 24 gives the Confederation superintendence of dikes

and forests in the upper mountain region. Art. 25 gives like power to protect game.

"Art. 26. Legislation upon the construction and operation of railroads is in the province of the Confederation."

"Art. 27. The confederation has the right to establish besides the existing Polytechnic School a Federal University and other institutions of higher instruction, or to subsidize institutions of such nature. The Cantons provide for primary instruction which shall be sufficient, and shall be placed exclusively under the direction of the secular authority. It is compulsory and in the public schools free. The public schools shall be such that they may be frequented by the adherents of all religious sects without any offense to their conscience or belief. The Confederation shall take the necessary measures against such Cantons as shall not fulfill their duties."

"Art. 28. The customs are in the province of the Confederation. It may levy export and import duties." Article 29 requires import duties to be low as possible. Art. 30 gives the proceeds of customs to the Confederation, out of which certain cantons are given allowances for Alpine roads.

Art. 31 guarantees free trade throughout the Confederation, except as to articles subjected to state police supervision and the salt and gunpowder monopoly. Art. 32 gives the cantons power to collect duties on wine and spirits under certain restrictions. Art. 32, amended in 1885, authorizes the Confederation to regulate the manufacture and sale of alcohol. Art. 33 permits the cantons to regulate the granting of certificates to practice a liberal profession.

"Art. 34. The Confederation has power to enact uniform provisions as to the labor of children in factories, and as to the duration of labor fixed for adults therein, and as to the protection of workmen against the operation of unhealthy and dangerous manufactures. The transactions of emigration and guarantees inviolable secrecy of letters and telegrams, by the State, are subject to Federal supervision and legislation."

"Art. 34 *bis*. (*Amendment of Oct 26, 1890*). The Confederation will by law establish invalid and accident insurance.

having regard for existing invalid funds. It may declare participation obligatory for all or for special classes of the population." Art 35 Forbids gaming houses.

Art. 36 places posts and telegraphs under the Confederation and guarantees inviolable secrecy of letters and telegrams. Art. 37 gives the Confederation general supervision over roads and bridges and Art. 38 gives it exclusive control of coinage.

"Art. 39. The Confederation has the power to make by law general provisions for the issue and redemption of bank notes, but it shall not create any monopoly for the issue of banknotes, nor make such notes a legal tender."

Art. 40. The Confederation fixes and the cantons enforce the standard of weights and measures. Art. 41 makes manufacture and sale of gunpowder a state monopoly. Art. 42 states the sources of revenue of the Confederation.

"Art. 43. Every citizen of a canton is a Swiss citizen." A Swiss settled in a canton other than that of his birth enjoys full political rights, but does not share in the municipal and corporate property, unless by act of the canton.

"Art. 44. No Canton shall expel from its territory one of its own citizens, nor deprive him of rights, whether acquired by birth or settlement." Naturalization is regulated by federal legislation. Art. 45 gives every Swiss citizen, except criminals and paupers, right to settle anywhere in Swiss territory on a certificate of origin. Arts. 46 and 47 subject residents to the jurisdiction of the place of domicile and provide for federal legislation as to temporary settlements and to prevent double taxation.

"Art. 48. A federal law shall provide for the regulation of the expenses of the illness and burial of indigent persons amenable to any Canton, who have fallen ill or died in another Canton."

"Art. 49. Freedom of conscience and belief is inviolable." No person can be compelled to take part in religious services or pay taxes to a religious body to which he does not belong. Art. 50 gives the public authorities supervision of religious bodies with power to determine their controversies. Art. 51



excludes the order of Jesuits from Switzerland and authorizes the exclusion of any other dangerous order.

"Art. 52. The foundation of new convents or religious orders, and the reestablishment of those which have been suppressed are forbidden."

Art. 53 makes civil status and records thereof and control of places of burial subject to civil authority.

Art. 54 secures freedom in contracting marriage and gives the wife the citizenship of her husband.

Art. 55 guarantees freedom of the press, but allows the suppression of abuses by the cantons.

Art. 56 allows freedom in forming associations except for unlawful purpose.

"Art. 57. The right of petition is guaranteed."

"Art 58. No person shall be deprived of his constitutional judge. Therefore no extraordinary tribunal shall be established. Ecclesiastical jurisdiction is abolished."

Art. 59. Suits for personal claims must be brought in the domicile of a resident solvent debtor.

"Imprisonment for debt is abolished."

"Art. 60. All the Cantons are bound to treat the citizens of the other confederated states like those of their own state in legislation and in all judicial proceedings."

"Art. 61. Civil judgments definitely pronounced in any Canton may be executed anywhere in Switzerland."

Arts. 62 and 63 abolish exit duties on property.

Art. 64. The Confederation has power to make laws on legal competency, commerce, copyright inventions and bankruptcy.

"The administration of justice remains with the Cantons, save as affected by the powers of the Federal Court."

"Art. 65. No death penalty shall be pronounced for a political crime."

"Art. 66. The Confederation by law fixes the limits within which a Swiss citizen may be deprived of his political rights."

Art. 67 gives the Confederation power to regulate extradition from one canton to another.

"Art. 68. Measures are taken by Federal law for the

incorporation of persons without country and for the prevention of new cases of that nature."

"Art. 69. Legislation concerning measures of sanitary police against epidemic cattle disease, causing a common danger, is included in the powers of the Confederation."

"Art. 70. The Confederation has power to expel from its territory foreigners who endanger the internal or external safety of Switzerland."

"Art. 71. With the reservation of the rights of the people and the Cantons, the supreme authority of the Confederation is exercised by the Federal Assembly which consists of two sections or councils to-wit:

A. The National Council.

B. The Council of States."

Arts. 72 to 79 provide that the National Council shall be composed of one representative for each 20,000 persons or major fraction and gives at least one to each canton and half canton of a divided one. All Swiss twenty years of age may vote and are eligible to election. The term is three years. The Council chooses from its members a President and Vice-President for each session.

Arts. 80 to 83 relate to the Council of States which consists of two representatives from each canton, and chooses its President and Vice-President for each session.

Arts. 84 to 94, give the Federal Assembly legislative power over the matters within the control of the Confederation. A majority of each Council is a quorum and a majority of those voting is required.

"Art. 89. Federal laws, enactments, and resolutions shall be passed only by the agreement of the two Councils.

"Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight Cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature."

Articles 90 to 94 relate to elections, voting of members of the Council and the introduction of measures and sittings of the Council.

"Art. 95. The supreme direction and executive authority of the Confederation is exercised by a Federal Council, composed of seven members."

Articles 96 to 104 provide that members of the Federal Council are chosen by the Councils in joint session for a term of three years, and they also choose from the Council a President and Vice-President for one year. Members are disqualified from holding any other office or following any other pursuit. President and Vice-President cannot hold two years in succession. Four members of the Council make a quorum. Members have the right to speak but not to vote in either house.

"Art. 105. A Federal Chancery, at the head of which is placed the Chancellor of the Confederation, conducts the secretary's business for the Federal Assembly and the Federal Council." The Chancellor is chosen by the Assembly for three years.

"Art. 106. There shall be a Federal Court for the administration of justice in federal concerns.

"There shall be, moreover, a jury for criminal cases."

"Art. 107. The members and alternates of the Federal Court shall be chosen by the Federal Assembly, which shall take care that all three national languages are represented therein.

"A law shall establish the organization of the Federal Court and of its sections, the number of judges and alternates, their term of office and their salary."

Arts. 108 to 114 relate to the organization, powers and jurisdiction of the court, which extends to all cases in which the Confederation is a party, between cantons and between cantons and persons or corporations, involving the status of persons, and important cases which the parties agree to submit to it, and of political crimes and against officials acting under federal authority and over questions of conflicting jurisdiction and constitutional law.

"Art. 118. The Federal Constitution may at any time be wholly or partially amended."

"Art. 119. Complete Amendment is secured through the forms required for passing federal laws."

"Art 120. When either Council of the Federal Assembly passes a resolution for the complete amendment of the Federal Constitution and the other Council does not agree; or when fifty thousand Swiss voters demand the complete amendment, the question whether the Federal Constitution ought to be amended is, in either case, submitted to a vote of the Swiss people, voting yes or no."

Art. 121. (*Amendment of July 7, 1891*).

"Partial amendment may take place through the forms of Popular Initiative, or of those required for passing federal laws.

"The Popular Initiative may be used when fifty thousand Swiss voters present a petition for the enactment, the abolition or the alteration of certain articles of the Federal Constitution.

"When several different subjects are proposed for amendment or for enactment in the Federal Constitution by means of the Popular Initiative, each must form the subject of a special petition.

"Petitions may be presented in the form of general suggestions or of finished bills. When a petition is presented in the form of a general suggestion, and the Federal Assembly agrees thereto, it is the duty of that body to elaborate a partial amendment in the sense of the Initiators, and to refer it to the people and the Cantons for acceptance or rejection. If the Federal Assembly does not agree to the petition, then the question of whether there shall be a partial amendment at all must be submitted to the vote of the people, and if the majority of Swiss voters express themselves in the affirmative, the amendment must be taken in hand by the Federal Assembly in the sense of the people.

"When a petition is presented in the form of a finished bill, and the Federal Assembly agrees thereto, the bill must be referred to the people and the Cantons for acceptance or rejection. In case the Federal Assembly does not agree, that body can elaborate a bill of its own, or move to reject the petition, and submit its own bill or motion or rejection to the vote of the people and the Cantons along with the petition."

"Art. 122. A Federal law shall determine more precisely the manner of procedure in popular petitions and in voting for amendments to the Constitution."

"Art. 123. The amended Federal Constitution, or the amended part thereof, shall be in force when it has been adopted by the majority of Swiss citizens who take part in the vote thereon and by a majority of the States.

"In making up a majority of the States the vote of a Half-Canton is counted as half a vote.

"The result of the popular vote in each Canton is considered to be the vote of the State."

In several particulars the development of the governmental system of Switzerland is unique. From the first advent of its Teutonic population there has been a settled distrust of arbitrary power and a disinclination on the part of the democratic communities to submit, for any purpose, to the dictation of a central authority. The cantons have manifested a willingness to combine for defense against Austrian and other rulers, who sought to impose their authority, but after success have preferred to retain freedom from any superior authority. The first real union under a central authority was forced on them by France, but since then the remodelled government is the product of Swiss genius. They have had to deal with people differing in language, ancestry and customs, separated by natural barriers and dwelling under a great variety of conditions. They have had democratic agricultural cantons and oligarchical cities, monastic establishments and Calvinists, cantons claiming proprietary rights over other districts, and a vast complication of petty trade restrictions and vexatious regulations imposed by each district for local advantage, to contend with. The inherent difficulties of establishing a system just and satisfactory to the German, French and Italian elements, to urban and rural communities, have not been less than those presented to statesmen elsewhere. They have also been subjected to external influences, which, to a weaker race, would have been irresistible, but which they with a moral and physical courage never excelled by any people have successfully overcome. Against the intrigues of the great powers they have presented a superior code of

morals and superior devotion to the true interests of their country.

The initiative and referendum, by which the people retain in their own hands at all times power to veto the acts of their representatives, to compel action by them on matters they will not undertake, and to amend even the fundamental law whenever they see fit, is a natural outgrowth of the hereditary distrust of delegated power. The Swiss system is clearly the most democratic, and gives the most unrestricted play to the law of social growth and progress of any ever devised. At the same time the process which is marked out for legislation insures full consideration of the question acted on, and guards against the dangers of popular passions perhaps as well as any known system. These dangers are usually greatly magnified. Unjust systems, by which a few profit and many suffer, are always built behind the protection of the governmental system. There is little occasion for fearing that such systems will be established as a result of a popular vote, but, whenever clearly pointed out, an existing one is likely to be more quickly gotten rid of by the direct action of the people than in any other manner. It is almost axiomatic that the deliberate judgment of the whole people, on any matter of general interest, is more likely to be right than that of a less number, entrusted with powers and privileges distinguishing them from the multitude and viewing the matter from the standpoint of a favored class.

In practice the referendum has operated mainly as a check on the action of the Federal Assembly, a few of the laws passed by it having been rejected by the people, while more than five to one of the enactments of the assembly have been allowed to take effect without any call for submission to a popular vote. The existence of the power in the hands of the people to reject an enactment must act as a wholesome check on the legislature, and the initiative tends to stimulate action demanded by the people.

Another marked superiority of the Swiss system over that of other European states is the absence of a standing army, the greatest curse which the governments of modern Europe impose on their people. Switzerland follows a settled policy

of neutrality in all the wars of other nations, and recognizes the principle of arbitration as of the same value and fulfilling the same mission of peace in the settlement of disputes between nations that the courts perform with reference to the contentions of individuals and bodies of citizens within the state. The ambition of military leaders, inherited feelings of hostility between nations, and ignorance of the blessings which may be derived from friendly intercourse, still produce that most lamentable spectacle of great nations professing civilization and Christianity, groaning under the weight of crushing military establishments, each of which becomes the main reason and excuse for the maintenance of the other.

Bern, the Swiss capital, has also become the seat of the most advanced governmental combination ever yet effected, the international Postal Union, a governmental combination, the sole purpose of which is to facilitate intercommunication between the people of all the nations of the earth. It discharges one of the highest and best functions of government, a useful service through the friendly coöperation of all nations in a surprisingly economical manner. Perhaps Swiss statesmen are not entitled to especial credit for the success of the Union, but the peaceful principles on which the state acts render it the natural home of such a Union. Switzerland, after enduring the evils of the lordship of one canton over the people of another under a claim of property rights, now has no subject territory. Wherever Swiss sovereignty reaches are Swiss citizens with equal political rights. The constitution shows evidences of a desire to reach better adjustment of compensation for labor, to better the situation of those who have less than a fair share of the fruits of industry, but it cannot be said that any principle of property rights in marked advance of those recognized in other countries has been accepted.

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## CHAPTER XXIII

### FRANCE

No country presents a more instructive history in the line of our study than France. We here have a chance to observe the development and reconstruction of their institutions by a people substantially homogeneous, who have dwelt in the same state for more than two thousand years. The Frenchmen of today are the lineal descendants of the Gauls, Belgians and Iberians of the days of Caesar, with some admixture, it is true, of Roman and German blood, and some commingling of Northmen. The record of events from the time of the Roman invasion is perhaps more full and complete than that of any other country. Nowhere else can be found wider extremes or greater variety of political institutions and theories of government. All stages of social organization from that of the small semi-savage tribe to the vast empire, and from the absolute despotism to the commune, have been exhibited. Abject slavery has been followed by the theory at least of liberty, fraternity and equality. Since Rome fell, no other European country has exercised so profound an influence on the institutions of other states.

The earliest inhabitants of whom we have any accounts include Iberians, presumed to have been the earliest comers, the Gauls and their kinsmen the Belgians. The descendants of the Iberians still dwell on the slopes of the Pyrenees and are called Basques. They were short of stature, of dark complexion, resolute and tenacious in the defense of their homes, but without capacity for organization on a large scale. The Gauls of early days, like the French people of today, were bright, vivacious, brave and intelligent, but they too had made little progress in the organization of society. They dwelt in villages mainly, but had some walled towns. Caesar describes them as divided into factions, and mentions these factions as



extending into every clan and village. The ruling classes were divided into two distinct orders, the knights and warriors, whose only calling was war, and who substantially every year carried on strife with some neighbor, and the Druid priests, who were not only charged with the management of religious rites, but also were the judges and teachers of the people. Beneath these ruling classes were slaves in large numbers, constituting the bulk of the population. The authority of the Druids was very great, and the Roman church appears to have borrowed some of its forms from them. One method of enforcing their judgments was by excommunication and interdict, causing everyone to fly from the condemned person as a being accursed, and to whom they could give no aid without calling down the heaviest penalties on themselves. They sacrificed human beings to their gods, preferably criminals and enemies, but for want of these the innocent were taken, and religious enthusiasm induced some to voluntarily become victims. In their exemptions from military duty and from taxes the Druids enjoyed privileges similar to those of the later clergy. In the use of torture in their trials and of burning as a punishment they furnished precedents for the Inquisition, and they ranked the crime of resisting their authority, as the later church did that of heresy, the most deadly of all offenses. Yet Caesar praises the impartiality of their justice, and gives them credit with protecting the weak as well as the strong. They built no churches, but held their rites in the groves. Whether polygamy was practiced is not made very clear, but it seems that it was. Caesar says that at marriage the husband added to the wife's dowry an equal sum, and that the increase of the whole was kept by itself and belonged to the survivor on the death of one of them. The husband and father had the power of life and death over his wife and children. Funerals were conducted with great extravagance and ceremony, and with human sacrifices of slaves or dependents of rich nobles. The Gauls appear to have passed the stage of common tenure of land in Caesar's time, for he speaks of the Druids having power to decide questions of boundary. They were accustomed to the use of money, and in the useful arts were

considerably in advance of the Germans. The Belgians were more like the Germans, to whom they were nearer and more closely related, and with whom they were almost constantly at war. Some progress had been made in weaving and metal working. Confederations were sometimes formed by different tribes for defense against incursions from the east, but they were not inclined to unite for aggressive warfare.

The Greeks at an unknown date settled at Marseilles and established Massalia, which became an important trading port, and in 122 B.C. the Romans founded the town of Aquae Sextiae, now Aix, and spreading out over the adjacent country formed the province of Gallia Braccata, of which as a Roman *municipium* Narbonne was made the capital in 118 B.C. In the time of Caesar the Helvetians and German tribes were threatening to invade Gaul, and Caesar's first campaigns were against them, with the Gauls seeking his assistance and protection. Having overcome these enemies, Caesar proceeded to reduce Gaul to the Roman authority, and by 50 B.C. had accomplished the task. From Gaul as a basis he established his power over Rome. Roman institutions were well adapted to the tastes and needs of the Gauls, who soon became thoroughly Romanized. The work of organization was not completed in Caesar's time. In 27 B.C. Augustus established three new provinces, in addition to the old one, out of the territory conquered by Caesar, namely Aquitania in the southwest, Lugdunensis in the middle and Belgica in the north. The population of the country was mainly of the ancient stock, with whom Roman colonists freely mingled. Though there were some revolts after Caesar's time, they were soon suppressed. The Romans brought their system of agriculture, their laws and arts. They built cities, made roads, encouraged commerce and established social order.

A long period of peace and rapid advancement in civilization followed. By 160 the Christian religion was introduced, and during the next hundred years it spread rapidly. The country was substantially exempt from inroads of foreign enemies for about three centuries. Under the empire Gaul played an important part. Antonius Pius was a native of

Gaul. In the last half of the third century Postumus established a Gaulic empire, which was continued by his successors Victorinus and Tetricus. In 236 the Alemanni, a German tribe unknown to the Romans, crossed the Rhine, but were driven back, and about the same time the Goths appeared on the Danube. During the next half century there were many incursions of Franks and Alemanni into Gaul, but no permanent conquest. By this time the imperial government had so ground the people of Gaul with taxation that they were thoroughly impoverished, and a notable uprising of peasants and slaves took place in 285, which spread over the north of Gaul and added to the miseries of the people. The title to the land was held by a few, and the work of tillage was mainly performed by slaves. The Gauls under Roman rule relied on the imperial government for protection, and when the period of disorder came, they were an easy prey to their more warlike neighbors across the Rhine, who, free from Roman domination, organized expeditions when conditions were favorable. Thus from 260 to 268 a band of Franks swept through Gaul into Spain and finally passed into Africa and disappeared. From this time forward there was more or less border warfare and incursions of Germanic tribes into Gaul, some of whom effected permanent settlements.

Early in the fifth century commenced that movement of people which put an end to Roman rule in Gaul. From 406 to 409 there was a deluge of invaders, who mercilessly killed the people and destroyed their property. Cities and towns, of which a great number had been built, were taken, pillaged and burned. In 412 the Visigoths and Burgundians established kingdoms in the south of Gaul. In 451 Attila and the Huns, who had become the terror of Europe, made their way into Gaul and took Orleans. They were met by the combined forces of Romans, Gauls, Goths and Germanic tribes, defeated at Châlons in a great battle, and expelled from the country.

The Franks, from whom France takes its name, were mainly settled in the neighborhood of the lower Rhine, and were divided into the Salians and Ripuarians. Though prior kings are named, their history is unimportant, and with Clovis king

of the Salian Franks of Tournay commences the Frankish state. Clovis was a fierce, cruel, cunning and unscrupulous barbarian, who did not hesitate to take the lives of all who stood in his way, often with his own hand, but he was successful in extending his power over nearly all Gaul. He married a Christian maid, Chlotilde, who, aided doubtless by other influences, converted him to Christianity. His warriors also were baptized, but neither he nor they took in much of Christian morality. He however became allied with the Christian clergy, who aided him in extending his power. The dynasty founded by Clovis derives its name from one of his ancestors, and is styled the Merovingian. With it the history of France as a nation begins. At his death Clovis left his kingdom divided among his four sons. He had acquired most of it by conquest, and he left it as an inheritance, divided according to the prevailing German custom among all his sons. They fought for the shares of each other, with the result that Clotaire got it all. At his death it was partitioned among his four sons and again united under Clotaire II. The Merovingians ruled from 511 to 752, and their history teaches little but the evils of despotic military rule. They were cruel, perfidious, debauched and many of the later ones almost idiotic. The pernicious principle of treating political power as property to pass by inheritance caused untold misery and misfortune to the people. No other dynasty illustrates so constantly and forcibly the evil consequences of passing political power from father to son without regard to capacity or merit. No other dynasty exhibits in more disgusting form the evils of despotic rule. Not kings only, but queens as well, displayed their cruelties and vices. The stories of Fredegonde and Brunchild are typical of a most cruel age and the execution of the latter, at the advanced age of eighty by tying her to the tail of an unbroken horse by the hair of her head, one arm and one foot, of the possibilities of kingly cruelty under Clotaire II. Murder and rapine lay at the foundation of the kingdom, and morality found little lodgment in the palace or the home of the great landlord. Christianity was for them merely the name of a superstition, and these coarse and brutal rulers

hoped for aid in their cruel deeds from the unseen power, to whose priests they gave present of lands and goods.

The government, laws and land tenure, which developed as a result of the conquest of the Franks, were made from three widely different systems. Before the advent of the Franks the Roman law furnished rules for all property rights, land tenure and inheritance, as well as for determining the status of citizens and slaves. The people were accustomed to submit to the cruel exactions of the tax gatherers, who robbed them of their substance without returning any considerable benefit in the way of public works or services. Illiteracy and ignorance were general, and the moral tone of society low. A large proportion of the people was held as slaves to the rest. In race the inhabitants were mainly Gauls, with an admixture of Romans, and with settlements of Goths and other Germanic tribes in places. The Franks had never been subject to Roman rule or law. They preserved and followed most of the ancient German customs, though the power of the king had been considerably increased. The controlling power of the nation still resided in the assembly of freemen, but the king and his antrustions, the followers of his person, had become a military caste and largely dominated the affairs of the state.<sup>1</sup>

Three orders of people had been formed among them. The antrustions, the freemen and slaves, whose relative importance may be judged by the rate of composition allowed for taking the life of one of them. For the antrustion, six hundred sous, for an ordinary freeman two hundred sous and for a bondman forty-five sous. At and prior to the time of Clovis the antrustions had not become a landed aristocracy. They were the companions and personal followers of the king, who fought with him and received a share of the booty taken, and were accorded a degree of consideration above that of ordinary freemen. To just what degree the ancient German system of common tenure of land had been modified it is difficult to determine, but neither the idea of individual ownership of an

<sup>1</sup> For a very full and interesting account of the development of the laws of France see Broussaud's *French Private Law*, *Continental Legal History Series*, vol. 3.

inheritance in the soil, nor of feudal tenure, had gained general recognition. In religion they worshipped the fierce German gods without the intervention of any priestly order. In domestic life they were monogamists, and their women were treated as companions. Though their customs admitted slavery, slaves were not numerous among them. On their advent into Gaul they found the Roman Church. It had supplanted the ancient Druids and already owned considerable estates. Among a people sunk in ignorance and prone to gross superstition, the clergy, with the mystery of book and bell, had gained great influence, and through the confessional, absolution, baptism, marriage and the many functions assumed as pertaining to religion, exercised a potent authority. Clovis adopted this religion, and his soldiers followed him to baptism as they did to battle. Though in after times contentions sometimes arose between the princes and the clergy, the two, working in concert, contributed greatly to each other's power. The princes encouraged the support of the church, and often granted it great possessions, and in return the clergy taught the ignorant multitude the divine right of kings to rule and the sacredness of their persons. The church had its peculiar list of offenses against its rules and authority and its own system of punishing offenders. The Franks as conquerors became the dominant force, and in all matters pertaining to the rights of Franks the Salic law prevailed, but it was crude and covered only the needs of a comparatively simple people. The Roman law, having been the development of a great empire during a long course of time, was of far greater volume and complexity, but owing to the long period of oppression, the general ignorance and the inefficiency of the judicial system, there was not much knowledge of its principles among the people. The existence of its learning and refinements in scattered volumes, which few even of the ruling class could read, afforded almost no protection to any one in his rights. The canons of the church were of more living force, for they were studied and followed by the clergy in all matters of ecclesiastical cognizance. The earliest code of Salic law extant is of uncertain date, but must have been written subsequent to the early con-

quests of Clovis. The legislative power was still in the assembly of freemen, and the judicial power in a judicial assembly of freemen. Punishments were almost exclusively by fines, and the law determined the distribution of wergeld among the kindred of a murdered man. It is said that the Germans knew only two capital crimes. They hanged traitors and drowned cowards. All other offenses could be commuted in money. In their first inroads the Franks came as red-handed spoilers. The plunder taken was divided among the conquerors. At first they did not covet land so much as cattle and goods, which they took wherever they could find them. In the development of the system of land tenure it was not at first the custom to grant great fiefs in perpetuity, or even for life. In that system which afterward became so general, by which the power and dignity of the nobles were measured by the tenure and value of their lands, the first step hardly contained a hint of what followed. At first the counts were sent to rule over their districts for a year only. The distribution of the counties was a matter debated in the general assembly, but later it was solely for the king. The authority of the counts was renewed from time to time, until an assignment to a county was generally equivalent to a term for life.

Clovis and his sons raised and led their own armies, appointed the counts who ruled in the counties and the chiefs of hundreds, but in the course of a few generations the incapacity of the kings made it necessary to choose more vigorous leaders. In a society constituted like that of the Franks at that time the chief man in the household of the king, where all the principal men congregated, naturally exercised the authority which the king was too weak or too indolent to exert. The mayors of the palace were sometimes named by the kings to aid them in their struggles with the *lendes*, the antrustions, and sometimes elected by the *lendes* in opposition to the king. While the kingdom was divided, in Neustria the mayors supported the interests of the kings, while in Austrasia they sided with the *lendes*. The mayors assigned the lords to their fiefs, raised the armies and led them to battle. Under Dagobert I and his son, Sigebert II of Austrasia, Pepin of

Landen, who had acquired vast possessions and great military prestige, became mayor of the palace. His son and then his grandson Pepin succeeded to his authority. The latter for twenty-seven years and during the time of four kings exercised the chief power in the state. He sought to pass his power at his death to an infant grandson by his first wife, but the nobles would not have it so and chose his son Charles instead. Charles became the real ruler, and the kings were mere puppets in his hands. The invasion of the Mohammedans and their crushing defeat by the Christians under the command of Charles at Poitiers in 732 gave him the name of Martel and greatly strengthened his position. Charles found it necessary in order to carry on his wars to make the church contribute, and did not hesitate to lay hold of church lands and confer them on his followers. Still he was a zealous churchman, and labored not only to drive back the Moslems, but also to propagate Christianity in Germany. At his death he transmitted a divided authority to his two sons, but one of them soon withdrew to a monastery, leaving Pepin sole mayor and ruler in fact.

In 752, with the advice and consent of the Pope, the general assembly of lords and bishops proclaimed Pepin king and put an end to the puppet kings. During the times of the mayors of the palace much progress had been made in the development of the feudal system. Land had become the source of wealth and power. The possessions of the church had been extended at times and taken away at others. The many partitions of the kingdom and the constant struggles between the descendants of Clovis, and later the mayors of the palace, for the whole kingdom, with the frequent murders and confiscations, brought new lands to the king, which he found it necessary to confer on his retainers in consideration of their support. Each vassal receiving a benefice became bound to furnish aid to the sovereign, corresponding with the size of his estate. In this manner much land had become the subject of tenure as benefices from the king or mayor, though most of it was then held only for life.

The succeeding reign of Charlemagne stands out in bold



relief in a barbarous age. The extension of his empire and the system of government he established have already been considered in the chapter on Mediaeval Europe and will not be here repeated. The feudal system as developed in France has also been treated in the same connection. The house established by Pepin reached its acme of intellectual vigor as well as of power in Charlemagne. With all his prudence in affairs of state, he adhered to the ancient Frankish custom of dividing his empire as an inheritance among his sons, and this custom continued under the Carlovingsians as in the first dynasty. The nobility, from being personal followers of the king, entrusted by him with the administration of local affairs for such limited period as he, with the assent of the popular assembly might fix, had grown in power and asserted a title to great estates; and from the time of Charlemagne the benefices began to be treated as inheritances which the king had no power to take away. With a firm hold on the land the feeling of dependence on the king abated, and the system, which was originally designed to create a strong bond of union between king and vassal, by a very natural evolution rendered the king dependent on his great vassals and reduced his authority to a shadow. The genius and energy of Charlemagne led him to take the utmost pains to gather information with reference to the condition of affairs in every part of his empire. He held frequent assemblies of the freemen, where laws and regulations were discussed. From these the double advantage accrued of gathering information from the people drawn together from different parts of the states for his own enlightenment, and the dissemination of knowledge and instruction in laws and principles of government among the leading citizens. He also employed messengers, constantly traveling over the country, to learn and report how the local affairs were being administered and what the needs of the people were. Nothing indicates more strongly his wonderful energy and capacity than his success in gaining and distributing information. Herein lies one of the greatest inherent weaknesses of a government by a single ruler. He cannot and does not know much about the conditions and the needs of his sub-

jects. In the nature of things a single person can be in but one place and investigate but one subject at a time. In a great kingdom there are thousands of places and subjects requiring careful, patient, intelligent consideration, and often vigorous action. To the indolent king in his palace with his dissolute courtiers the needs of the times are almost unknown, and often the capacity to act efficiently is wanting. The task is altogether too great even for the greatest of men. This truth was well illustrated in the succeeding reign of Louis the Pious, who is characterized as moral, cultured and actuated by the highest motives and purposes, yet in his tastes he was modest and retiring, preferring solitary study to mingling with the throng. The government of such an empire imperatively demanded the utmost vigor in gathering knowledge of what was going on and the most prompt and resolute action. It was not an age when moral worth in a king brought voluntary compliance with his wishes. The soldiers, who had followed his father, Charlemagne, in his victories, were fierce barbarians. Charles himself could be bloody and cruel when he deemed it useful, as in the case of the revolted Saxons, when he caused the heads of four thousand five hundred of their chief men, whom he had summoned to meet him, to be all cut off in one day. Gentleness and humility were virtues not then appreciated in a ruler. Courage, strength and an iron will were requisite to the control of a turbulent and immoral nobility. The reign of the pious, kind Louis was of weakness, disorder and civil war. In the laws which he promulgated the wonderful diversity of genius and marvelous intellectual energy of Charlemagne is displayed. His Capitularies included articles inculcating moral precepts, regulating matters political and of administration, prescribing penalties, regulating civil rights, relating to religious matters, canonical observances and incidental matters. The Capitularies were lacking in system and logical arrangement, and many of them were mere expressions of sentiment on some moral or religious subject, but taken all together they exhibit the activities of a remarkable mind, capable at the same time of formulating rules and carrying them into practical operation. Unlike some

of his successors, Charles was not afraid of learning, but had a school in the palace conducted by the best teachers he could obtain, and he encouraged the dissemination of such learning as was then taught. There was too much ignorance and barbarism for him to fear the effects of learning among the people. It was a most laudable command he gave to the bishops and abbots, that in the cloistral schools "they should take care to make no difference between the sons of serfs and of free-men, so that they might come and sit on the same benches to study grammar, music and arithmetic." Charles ruled forty-six years from 768 to 814 with Aix la Chapelle as his capital and an empire covering parts of Italy and Germany and all of France. The empire he established fell apart under his successors, and the Carolingian dynasty came to an end in 987, prior to which time thirteen kings of that race sat on the throne of France. During this period there were many incursions of the Northmen, who ravaged the coasts, ascended the rivers, took and pillaged many of the chief towns. These became more frequent and in larger numbers until the reign of Charles the Simple, when the Northmen under the lead of Rolf settled at Rouen. In 912 Rolf was given as a fief the lands he and his followers had conquered and became a vassal of the king. The Normans settled down to agriculture, and no further incursions ensued.

The Magyars made inroads from 910 to 954 in the eastern provinces but effected no permanent settlement. The feudal system continued to grow, and the inheritance by the sons of the great vassals of their fiefs became an established rule. The German, Italian and French portions of the empire fell apart in 843. The provinces were treated as property, to be bestowed and distributed according to the king's pleasure, and France was divided to meet the varying conditions. The progress made in the development of the inheritance of fiefs is indicated by a capitulary of Charles the Bald in 877.

"If after our death any of our lieges moved by love for God and our person desires to renounce the world, and if he have a son or other relative capable of serving the public weal, let him be free to transmit him his benefices and his honor accord-

ing to his pleasure. If a count of this kingdom happen to die and his son be about your person we will that our son, together with those of our lieges who may chance to be the nearest relatives of the deceased count, as well as with the other officers of the said countship, and the bishops of the diocese wherein it is situated, shall provide for its administration until the death of the heretofore count shall have been announced to us and we have been enabled to confer on the son present at our court the honors wherewith his father was invested." Thus, while the king nominally retained the right to confer the fief at the death of the tenant, he recognized the right of the heir to take it. During this period the power of local administration and the ownership of land had become consolidated. The counts, who under Charlemagne were merely his local officers, had all become great landowners and ruled their estates because they owned them. Political power passed by inheritance with the land. Under the Carolingians the feudal system continued its development, and by the end of that dynasty the great lords and the heads of the church represented the political power of the state. Subinfeudation had become a part of the system, and the great lords had their vassals holding considerable estates with other vassals below them. The advantages of connection with the ruler of the district led those holding allodial lands to give them to the lord and receive them back as fiefs. By so doing the tenant became a person of greater consideration, entitled to a larger composition in case of injury, exempted from the confiscation of his property for failure to appear in court or obey the judge's orders, and from trial by ordeal of boiling water for petty crimes. The immediate vassal of the king could not be compelled to testify in court against another vassal, nor to swear in person at all, but only by the mouths of his own vassals. Thus there was great advantage in holding directly from the king. This process of converting the *allodium*, or independent tenure of lands, into fiefs became most active under the weak kings, when the local lords became the real rulers, unrestrained by any central authority. It continued under the third dynasty. As to much of the land, the church-

men held the places of feudal lords, and archbishops, bishops and abbots were temporal rulers, who took a leading part in national affairs.

On the death of Louis the Sluggard, the last of the Carolingians, in 987, the lords spiritual and temporal met at Sanlis, and Adalberon, archbishop of Reims, induced those present to put off the choice of a king till a more general meeting could be held, and to swear to the duke of Paris "between his hands" that in the meantime they would do nothing in the way of the election of a king. About the last of June they reassembled and, putting aside as unworthy Charles of Lorraine, a lineal descendant of Charlemagne and uncle of the late King Louis, on motion of the archbishop they chose Hugh Capet, count of Paris, a descendant of that Count Eudes who had stoutly defended Paris against the siege of the Northmen, as king. He was thereupon proclaimed and crowned king by the metropolitan. He was thus made king by the church and the feudal lords, and the dynasty so established was a feudal one under church influence. In return for kingly aid the church taught the divine right of the king to rule and the doctrine of submission and obedience to his authority, no matter how unjustly or oppressively exercised.

In the election of Capet the French clergy exhibited exceptional independence, for Pope John XVI sustained the claims of Charles. The reign of Hugh Capet lasted only from 987 to 996. On his death his son Robert succeeded him, and he and his son Henry and grandson Philip ruled till 1108. Capet and his successors were great landowners and ruled as counts of Paris over their estates and province. The kingly office gave added prominence rather than a great increase of power. The king had feudal superiority and precedence over his great vassals, whom he had a right to call on to aid him in his wars, but he could not pass the vassals by and command the followers under them. Within his own district the feudal lord brooked no dictation as to the conduct of local affairs, even from the king. The king's court, however, was the fountain of honor and distinction, and kingly power, though not vigorously exercised during this period, was more than a shadow.

This was a time of freedom from foreign wars. The vassals fought their private wars and the king sometimes took part in them. In the time of Capet there was some resistance to his authority by followers of the Carolingians, but they were subdued.

That the common people felt the grinding oppression of the system is evidenced by revolts of the peasants, one of which occurred in Normandy and was suppressed with great barbarity. The church, too, began to exhibit cruel jealousy of any questioning of its authority, and the burning of heretics became one of its functions. The relations of king and vassals are well illustrated by the aid afforded by King Henry I to young William of Normandy, against his revolted vassals, aided by Guy of Burgundy, and later by the war between King Henry and William in which the king was defeated by William in two battles. The king died soon after and William appeared at the coronation of his son Philip, for whom he fought against his revolted subjects. It may almost be said that private war was so general and inseparable an incident of the times that it did not imply real enmity between the combatants.

This was the age when knighthood flourished. It was essentially a military order of mounted and armored warriors. The code of duty and honor, to which a knight was sworn, exhibits a strange blending of pure Christian virtues and aspirations, with wars' savagery. Many different orders of knighthood were formed during the crusades. In the earliest stages knighthood was connected with the feudal system of land tenure and implied the possession of a fief of sufficient value to maintain the knight, supply him a horse and armor and means to defray his expenses during the customary period of knightly service in the wars of his over lord. There were various methods of conferring knighthood. That deemed most honorable was for valiant service, and conferred by the over lord on the field of battle. The members of the knightly orders of fighting priests, which were organized during the crusades, were not necessarily holders of fiefs, or of any lands. In course of time knighthood came to be conferred only on

descendants of the nobility. The ceremony of investiture might be purely military or a combination of both religious and military rites. When conferred in times of peace with full religious ceremonies, the candidate for knighthood was required to first purify himself in a bath and clothe himself in a white tunic, symbolical of purity, a red robe, symbolical of the blood he would shed for the faith, and a black coat, emblematic of the death awaiting all men. He must fast for twenty-four hours, then enter the church and spend a night in prayer. After confession he received the communion, and often listened to a sermon on the duties of knighthood. He then advanced to the altar with the knight's sword hanging from his neck. This the priest took off, blessed and replaced on his neck. He then knelt before his superior lord and having been duly questioned and made the required responses, received his spurs, coat of mail, cuirass and sword and was dubbed knight by receiving three blows from the lord with the flat of the sword on his shoulder or neck. The knightly oath bound him above all to be a bold and constant fighter, a fierce barbarian in the service of his king, his overlord and the church, but to uphold the rights of widows, orphans and damsels, to injure no one maliciously nor fight for gain, but only for glory and virtue, to guard the honor and rank of his comrades and do no trespass against them, to be truthful and keep faith inviolably with all the world and aid one another, to shun no danger, nor take pay from any foreign prince, to live in order and discipline when in command of troops, to faithfully defend females in his charge and do them no evil, that being challenged to equal combat he would not refuse to fight, that in the pursuit of honor he would dare and do his utmost, "that above all things he would be faithful, courteous and humble, and would never be wanting to his word for any harm or loss that might accrue to him." Had the knights generally strictly adhered to these precepts, many of which breathe the purest and loftiest sentiments, the world would have progressed rapidly from its degraded state, but unfortunately the part most faithfully followed was that which enjoined fighting and bloodshed. The Christian virtues of truthfulness and protection to the weak

were far too often neglected. Still this knightly code exercised a profound influence on society. The times were a strange mixture. In church and monastery might be found zealots struggling to attain an ideal purity and holiness by the sacrifice of all worldly comfort and enjoyment. Fasts, vigils, scourgings and all manner of mortifications of the flesh were self-inflicted and patiently endured to attain spiritual purification. On the other hand some churches and monasteries were the homes of ambitious men, who cunningly sought wealth and power or lived as idle debauchees, secretly scoffing at virtue, religion and morality. It was the age of discord and of superstition. The estate of each petty noble was essentially a separate sovereignty, from which the common herd were never allowed to wander. There was no intercourse between those dwelling at a distance from each other, unless they were of knightly rank. At the king's court and at the tournaments the knights gathered for their fierce sports. Education was wholly neglected among the common herd and hardly less among the nobles; even among the monks many were illiterate, and the learning of the clergy was sadly deficient. Yet in some quiet cells there were earnest students and patient scholars who sought light and truth with great diligence. This was the age which brought forth William of Normandy, the conqueror of England, a bastard son of Count Robert, descended from Rolf the Northman, who had won his foothold there about a century and a half before the invasion of England. William's mother was the daughter of a tanner, and it is probable that he owed much of his vigor and ability to her. By reason of the seafaring habits of the Normans and their proximity to England, there was much intercourse across the channel. On Sept. 27, 1066, William sailed with his fleet to effect the conquest of England. How large a force he took or in how many or how large ships he sailed we have no definite record, but he won the battle of Hastings and gained the English throne. Thus a vassal of the French king became ruler of England. The claims of the Norman to rights in France as a feudal lord became a prolific source of contention and wars between the two countries, from which little but evil resulted to the people of both.



Stirred by the preaching of Peter the Hermit the First Crusade started in 1096 to free the Holy Land and clear the way for the pilgrims. Since the age of Charlemagne there had been no foreign wars to take the people of France into far distant lands. There was but little commerce, and the intercourse between distant people was exceedingly limited. The pilgrimages of the devout to Jerusalem afforded almost the only occasion for gaining knowledge of foreign countries, and these of necessity were not in great number. The people of France, always noted for their daring and generous impulses, were profoundly moved by the accounts of the sufferings of the pilgrims and the profanation of the Holy City by the infidels. France furnished a large portion of the army for the first crusade and its most noted and efficient leaders, Godfrey of Bouillon, Raymond of Toulouse, Tancred de Hauteville and other less noted men led the organized force, and followed the great multitude which started as a mob and ended in disaster. The impulse which moved the crusades was not moral but religious. Nothing in history better illustrates the difference between morals and religion. The people were profoundly stirred by the preaching of Peter and his details of the desecration of the Holy City and of the wrongs and indignities suffered by the many pilgrims, who sought miraculous aid from a spot supposed to be possessed of peculiar virtues because of its association with Jesus, the apostles and saints. The purpose of the crusaders was war against the infidels, for whose blood they thirsted. In passing through the intermediate country to Constantinople, being unprovided with supplies or money, they foraged as if in an enemy's country, and were guilty of all manner of brutality and excesses, so that they were quite as much the dread of the European Christians as of the Moslems of Syria. After many delays, much discord and sometimes bloodshed among them, the crusaders on the 15th of July, 1099, took Jerusalem by assault and slaughtered great numbers of the Mohammedans. The leading purpose had been accomplished, and Godfrey de Bouillon, refusing the title of king, became Defender and Baron of the Holy Sepulchre. Though the political and religious conse-

quences of the crusades were of minor importance, the educational influences were very great. Not only from all parts of France, but from Spain, England, Italy, Germany and in fact the whole Christian world, the boldest and most enterprising knights were gathered to fight for the faith they professed. They journeyed through strange lands and came in contact with strange people. The Greeks of the eastern empire were scarcely better known to them than the Turks, Arabs and Egyptians, whom they came to fight. The rude Christians saw the cities and gardens of the East. People were moved to view a wider horizon and to long for knowledge of distant lands and alien people. This is the greatest good that ever results from distant wars. In spite of the cruelty and bloodshed, the combatants learn to know and to respect each other. Instead of the settled hatred of distant enemies, some measure of respect and even of friendship results. Commerce founded on mutual benefit develops, and stimulated by trade the industries of each land take on new activities, and the peaceful intercourse of merchants slowly but surely lays the foundation for lasting peace and mutual good will. The scattered people of Europe, who from the fall of the Roman power had dwelt in comparative isolation for six centuries, were now made acquainted with each other. Returning crusaders could tell from personal knowledge of many strange people and distant lands. The impulse thus given to thought and the desire for knowledge which it stimulated were of the greatest importance and by far the most valuable of all the results of the crusades. No country was represented by more or better men in the Christian ranks than France, and none profited more from the educational influence. The Christian rule in Jerusalem ended in 1187 and was never productive of important political results. None of the crowned heads took part in the First Crusade, but the second in 1147 brought out King Louis of France and the German Emperor Conrad. Defeat and disaster met them. When Saladin took Jerusalem in 1187, it must be said to his credit that the barbarities exhibited by the Christians on their entry were not repeated by the Mohammedans, and he even paid the

ransom of many of the captives, after allowing the soldiers to march away.

Subsequent crusades were barren of substantial results, beyond the misery they caused and their continued educational influence. Louis IX engaged in a disastrous expedition in 1248, spending the six following years in Egypt and Syria, only to suffer defeat and fall a prisoner in the hands of the enemy. After paying a heavy ransom and returning to France he lost his life in an attack on Tunis. Louis is extolled as a model prince and a real lover of truth and justice. During the years of peace he did much to advance the welfare of his subjects. One of the greatest evils of the feudal system was the exercise of judicial power by the baron without right of appeal, no matter how great the disregard of the law. Louis appointed itinerant judges and established courts superior to those of the feudal lords, gave a right of appeal in the last resort to himself and made a great law court of his parliament. He restricted feudal warfare among the barons, and issued a code of laws known as the "establishments of Saint Louis." Though a despotic sovereign, he sought to rule by fixed principles, which are generally conducive to order. In his decisions he was governed by what he regarded as the law, rather than by caprice or personal considerations.

The extreme of vice and cruelty which excessive religious zeal may attain was exhibited in the crusade against the Albigensians. Their crime was that by reason of the admixture of descendants of Greeks, Romans, Jews and Gauls with Goths, Arabs and traders from the Mediterranean ports, the people had more of culture and refinement and more breadth of knowledge and liberality of sentiment than the more ignorant people of the north. This necessarily tended to a perception of the narrowness and bigotry of the clergy and to a questioning of the authority of the priesthood. That suppositious crime, heresy, developed under such conditions. The result was that a crusade was preached with the sanction of the pope against the Albigensians, and a vast army was gathered, not only from other parts of France, but also from Germany, and for fifteen years from 1208 to 1223 one of the most cruel

wars and persecutions of history was waged by the orthodox Christians against other more humane and enlightened Christians. Though the pretext for this cruelty was religion and the good of human souls, the power of the church was at stake. The great religious corporation, of which the pope was the head, was quite as jealous of its temporal ascendancy, of its revenues and its supervision over temporal rulers, as of mere matters of belief. Bishoprics had in many places come to be treated as inheritances, to be disposed of by will or otherwise in accordance with the wish of the incumbent. The period of feudal discord following the breaking up of the empire of Charlemagne had been auspicious for the extension of the power of the church, the crusades had inspired a feeling of unity among the Christians, and made the Pope, as the head of the church, by far the most conspicuous figure in Europe.

During the twelfth century France was split into many states with ever changing combinations, due to wars, marriages and alliances. The establishment of the Norman dynasty in England induced a succession of wars in support of the claims of English kings to French dominions. The growth of towns and the incipient stages of the development of burghers' rights had already begun in the reign of Philip Augustus, 1180 to 1223. He continued the privileges of forty-one communes, which had been granted charters before his time, and established forty-three new ones. The extremely rudimentary character of the government of Paris in the time of St. Louis is shown by the fact that the same person was prefect, mayor and receiver general under the name of provost, and that the office was a purchasable one. Louis put an end to the sale of the office and separated it from the receivership of the royal domains. He also provided registers for the rules of the various organizations of artisans, the masters of which appeared before the provost to declare and have recorded their regulations. Paris, though the French king's capital, was not to be compared in importance as a manufacturing center to the Flemish towns, which by the thirteenth century had taken the lead in the manufacture of woollen stuffs, and were organized on republican principles, leagued together, with agencies established in London and elsewhere. Their trade by the

year 1300 had become very extensive, and Flanders was the richest and most populous country in Europe. In that year Philip IV added it to France, but in 1302 met a crushing defeat at the hands of the revolted burghers.

It was in the reign of Philip IV, *Le Bel*, that Pope Boniface boldly claimed that the spiritual power included the temporal, and hence that the king was under his guidance. This Philip denied, and a fierce controversy ensued which continued till the death of Boniface. Clement V was elected through the active efforts of Philip after the brief term of Benedict XI, and rewarded the French king for his aid. He established his residence at Avignon, where the Holy See was maintained for the next thirty years, largely under the domination of the French kings. Philip also attacked the order of Knights Templar, caused the persecution and burning of their grand master and many leading men of the order, and confiscated their treasures. Under his reign the kingly power was much increased at the expense of the pope, the orders and the feudal lords. In 1315 Louis the Quarreler issued the following edict: "Whereas, according to natural right, every one should be born free, and whereas, by certain customs which from long age have been introduced into and preserved to this day in our kingdom, many persons amongst our common people have fallen into bonds of slavery, which much displeaseth us, we considering that our kingdom is called and named the kingdom of the Free (*Franks*), and willing that the matter should accord in verity with the name, . . . have by our grand council decreed and do decree that generally throughout our whole kingdom, such serfdom be reduced to freedom on fair and suitable conditions, . . . and we will likewise that all other lords who have bodymen (or serfs) do take example by us to bring them to freedom."

It will be noted that this applied only to the serfs of the crown and did not have the effect of liberating those held by other feudal lords. On his death he left only daughters. A posthumous son lived only five days. His brother Philip the Long then convened a parliament, at which it was settled and ever after remained the law, that "the laws and customs inviolably observed among the Franks excluded daughters from

the crown." This rule excluded the claims of Edward III of England, which were derived from his mother.

The development of the towns of France and the influence exerted by them on the governmental affairs differs in some respects from that of other countries. No town at any time prior to the revolution of 1789 occupied a commanding position as a municipality. During the worst period of feudal anarchy the knights and their retainers were, to a great extent, robbers and non-producers. Such industries as their immediate followers pursued were mainly connected with the land. Throughout France, and especially in the southern provinces, considerable towns survived the inundations of the barbarians and preserved some of the ancient Roman forms of municipal government. When the bond which tied Charlemagne's great empire together became so weak that the king looked only to his feudal vassals for the government of their territories in accordance with feudal customs, it appeared that these were not adapted to the needs of manufacturers and traders. On the contrary the feudal baron, who did not work and who made war his business, became a robber of the more industrious townspeople. His extortions were either by peaceable exactions in some form of taxation or by forcible taking of property by himself or his retainers. In a large number of the principal towns the governing power was in the hands of bishops or other church officials, who ruled often in a manner similar to that of the lay nobility. The wrongs suffered by the town folks at the hands of their local rulers led to concert of action on the part of the burghers for self-protection and to conflicts with the local barons. The outcome of these conflicts was some sort of an agreement as to the terms on which the burghers might live, and many of these agreements took the form of charters granted by the lord or bishop, and some of them were submitted to and approved by the king. They related solely to local affairs, and no general combination of the scattered towns for their common protection was effected, which could at any time be called national. Some of the southern towns united for mutual protection, and the Flemish towns formed real republican leagues, but the towns in the interior struggled on separately. Such rights of local govern-

ment as they gained were assured only by their written charters, and observed or not at the pleasure or according to the moral character of the lord. For violation of their rights the only appeal against their oppressors was to the king. Such appeals were often made, but the relief obtained depended on the character of the king. The townsmen looked mainly to peaceful industry for their livelihood, while the knights despised all useful employments and made war and destruction their chief business. A natural law of the utmost importance, but often overlooked, gave increase of numbers and of wealth to the peaceful and industrious burghers. They were often plundered and many of them killed by the warlike barons and their retainers. They were themselves often contentious, turbulent and bloody, yet their general purpose was to labor and produce useful things. Theirs was a purpose superior morally and economically to that of the feudal aristocracy, and it brought to them the reward of increased numbers and importance. In process of time the kings found that the burghers could supply them with money and even with fighting men, and the strife and jealousy between the feudal lords and the burghers made it possible for the king by uniting with the burghers to maintain his authority and increase his power over both. At first the charters of the communes gave them power only to regulate their local affairs by their own officers separately and in their own way, but under St. Louis and Philip *le Bel* general regulations applicable to all the communes were prescribed. Following this came a recognition of the right of the towns through their representatives to be consulted in matters affecting the general welfare of the kingdom, and in 1302-1308 and 1314 Philip *le Bel* convoked the States-General and summoned thereto "the deputies of the good towns." In 1338 the states obtained from Philip of Valois assent to the declaration, that "there should be no power to impose or levy talliage in France, if urgent necessity did not require it, and then only by grant of the people of the estates."

Thenceforth there was a connection between the towns and the central authority by representation in the States-General, when convened, and by the direct exercise of the king's authority in the government of the towns, but there was no clear

recognition of the rights of the burghers nor definite check on the tyranny of either king or feudal lord. By the close of the thirteenth century the feudal system had, as its natural products, sprinkled the country over with lords' castles with heavy walls and moats to resist attacks, and walled towns. Feudal wars and the lack of any general authority capable of affording protection to the weak made it necessary for the burghers to defend their towns and the knights their castles. In 1329 Edward III of England, being thereto summoned, paid homage to Philip of Valois, as king of France, for the duchy of Aquitaine, but in 1337 Edward himself laid claim, though without any very plausible ground, to the crown of France, and commenced what is sometimes called the hundred years' war. It was cruel and destructive and unproductive of benefit to either combatant. Edward courted the aid of the Flemish towns and alliances with disaffected nobles, from some of whom he claimed and received homage as king of France. Opposing claims of different vassals to the duchy of Brittany led to the king of France supporting one and the king of England another, and, though a truce had been agreed on between the two kings, they fought in Brittany for their vassals, though still claiming to observe the truce. This was spoken of as the war of the three Joans, owing to the leading parts taken by wives of the claimants to the dukedom, and exhibited the mixture of fierceness and barbarity with occasional bursts of generosity and virtue so characteristic of feudal society. From 1347 to 1349 the "black death" took off a great part of the population. In the early period of the hundred years' war the English gained advantages. At Crecy the French were defeated and again at Poitiers, where on Sept. 19, 1356, John II of France and his young son Philip were taken prisoners by the English under the prince of Wales. They were treated as distinguished guests, though the arbitrary execution of prisoners or obnoxious subjects was a frequent occurrence under both sovereigns. Before this unfortunate battle, in 1355, John had found it necessary to convoke the States-General, from which he received liberal grants of supplies and the levy of new forms of taxes that occasioned great discontent. After the battle of Poitiers John's eldest son Charles assumed the



direction of affairs under the title of lieutenant of the king and summoned the States-General to meet at Paris on Oct. 15. The clergy appeared in full force and about one hundred deputies from the towns, but so many of the nobility had fallen in the battle that the representation of that order was very light. Each order at first held separate sessions, but they soon chose commissioners from each to sit together. These numbered eighty in all. Charles, who is styled the Dauphin, appointed some of his officers to be present at their meetings, but they refused to proceed in their presence and the officers thereupon withdrew. After a few days they made their demands on Charles "that he should deprive of their offices such of the king's councillors as they should point out, have them arrested, and confiscate all their property." Twenty-two men, including the chancellor, president of parliament, king's steward and some officers of his household, were named. They also demanded that deputies called reformers should traverse the provinces as a check on the royal officials, and that twenty-eight delegates chosen from the three orders, four prelates, twelve knights and twelve burgesses should be constantly placed near the king's person "with power to do and order everything in the kingdom just like the king himself, as well for the purpose of appointing and removing public officers as for other matters." The Dauphin asked time to consider and left Paris for Metz. During his absence the populace of Paris under the lead of Stephen Marcial became exasperated at an order for the debasement of the coin and compelled its suspension till the Dauphin's return, when they again rose and forced him to accede to the principal demands made by the States-General, and they were authorized to meet when they pleased. At a subsequent session of the States-General in March, 1357, a grand ordinance in sixty-one articles, enumerating the grievances complained of and prescribing redress for them, was drawn up, and a grand commission of thirty-six was appointed to meet together at Paris for ordering the affairs of the kingdom, whose orders all classes must obey. A period of turbulence followed, during which the populace of Paris took a leading part in public affairs. In February, 1358, under the lead of Marcial they entered the palace and killed the

marshals of Champagne and Normandy in the presence of the Dauphin. Marcial soon became dictator at Paris, and the Dauphin escaped to Senlis. He soon after convoked the States-General to meet at Compiègne. In response to his call the nobles and partisans of the murdered marshals turned out and demanded the execution of the murderers. While matters stood in this attitude there was an uprising of the peasants in Normandy and other provinces. They took and demolished many castles and killed many noblemen and their families. Marcial sent out a body of three hundred burghers to aid in taking the castle of Ermenonville, which was demolished and all the nobility in it put to death. The nobility under the lead of the Dauphin soon made common cause against the peasants, who were overcome and great numbers of them massacred. Marcial, as a last desperate expedient to save himself, called in the aid of the English and admitted a body of them into the city, but a quarrel broke out between them and the Parisians, in which a number of the English were killed. On July 31, 1358, while attempting to open the gates of the city to admit the king of Navarre and the English, Marcial was killed by the Parisians. The crude attempt of Marcial and his coadjutors to curb the tyranny of the king and nobility served only to show the lack of capacity for organization and concerted action on the part of the burghers and peasants. They were utterly wanting in regard for the rights of others and that self-restraint which is so essential to popular government. The authority of kings and feudal despots may be supported and maintained over an ignorant and debased multitude merely by armed force and regardless of mercy or justice, but, as Montesquieu ably points out, popular government can only rest securely on justice to each and to all. Marcial and Callet, the leader of the peasants, started out in a just cause, but soon adopted the methods of the authors of the wrongs of which the people complained. If they could have restrained their own passions and those of their followers, they might have accomplished great good, but the people of that age were not prepared for popular government. After Marcial's death, on the return of the Dauphin, the popular leaders were taken and summarily executed.

In the fall of 1359 Edward invaded France. After roaming about and pillaging the open country without laying siege to any of the strong towns he concluded the treaty Bretigny, May 1360, with the Dauphin, by which Aquitaine with enlarged boundaries was acknowledged as an English province freed from French sovereignty, and a ransom of 3,000,000 crowns was to be paid for King John's release. War over the succession to the throne of Castile was participated in by the French on one side and the English on the other, and in 1369 war was again declared by Charles V of France, which resulted in the recovery by the French of most of the territory ceded by the treaty of Bretigny without any decisive battles. Charles V died in 1380 and was succeeded by his son Charles VI then only twelve years old. In his reign civil discord as well as foreign war harassed and impoverished the country. The Burgundian and Orleans factions, with the foreign and domestic alliances peculiar to that age, kept up constant strife. The Flemish cities, in spite of their wars, grew and preserved much of their local freedom. In 1415 the famous battle of Azincourt was fought, in which the French sustained a crushing defeat and the loss of a great host of the nobility. The invention of gunpowder and changes in the military system, from the armored knights fighting on horseback without order or discipline, all serving for limited periods without pay in accordance with feudal law, was gradually changing into a more orderly system of paid and systematically organized troops. Gunpowder deprived the armored knight of most of his superiority over the unprotected and poorly armed foot soldier. The war between English and French dragged on under Charles VII, a very weak prince. The Burgundians aided the English. French fortunes reached a very low ebb till during the siege of Orleans by the English Joan of Arc appeared and with a magnetic force unique in history roused the spirit of the French and led them to victory. Though Edward III might treat a worthless prince like King John, while a prisoner, with such marked consideration as to make him really enjoy his captivity, when the pure-minded and lofty souled Joan fell into his hands, they burnt her as a witch and

heretic in 1431. With the withdrawal of the Burgundians from the English side the fortunes of the latter declined, and they were forced to withdraw from the interior. The long period of internal discord and English dominion in France drew toward its close. In 1439 the States-General were convened by Charles VII, and a start was made toward the organization of a standing army and a regular system of taxation for its support. This aroused the hostility of the nobles, but Charles persisted and organized fifteen companies of one hundred lancers each, which he set to work clearing the country of the robbers with which it was infested. In 1453 the English were driven from all their possessions except Calais, Havre and Guines Castle. The long struggle had tended to develop a national sentiment in France, and all the brilliant campaigns of the English were barren of profit.

After the close of the reign of Louis XI France entered on a career of contests and diplomacy with foreign states, with the details of which we are not concerned. Although the administrative system had not reached its full development, the structure of the French monarchy was already settled. The king was the state, and his authority was backed by military power. Under Charles VIII began those Italian wars, based on a claim to Naples and Sicily, which were productive of so much bloodshed and so little advantage. From this time forward the field of military operations widens and France plays a leading part among the nations of Europe. The distinct progress accomplished was the formation of a compact state, developing an orderly though not a just system of intercourse with and knowledge of the other states of Europe, under which industry increased and knowledge was sought. Not to a changing form or theory of government during this period, but to other causes, must we look for the signs of progress and the growth of those sentiments of liberty and equality which blazed forth in the eighteenth century. The feudal system was the rule of local petty tyrants, who had no respect for, nor sympathy with, any class of laboring or trading people. The stratification of society was into the various feudal orders, with the serfs at the base and the king at the head, a ruler

whom his greatest subjects defied, and the churchmen professing brotherhood, but rigorously ruled by church officials. The enterprises carried on by feudal barons led to no discussion of the principles of social organization. The establishment of the power of the king on a more firm basis and the opening of the era of wars between great states had taken place by the reign of Francis I, 1524 to 1547. Then came that revolution which affected Europe and especially France so profoundly, the religious reformation. For centuries the Pope and catholic clergy had enjoyed not merely the distinction of rank in the religious world, but great temporal power and vast revenues. Fondness of display and love of power had become quite as characteristic of the popes and prelates as of the temporal sovereigns. The creed was tenaciously clung to, but the moral teachings of Christ were often forgotten. The sale of indulgences to do wrong shocked the moral sense of great numbers, in an age when great crimes were common. The state of society in France in the sixteenth century was peculiar. The government was in a stage of transition from the anarchy of feudalism to a kingly despotism. The law was a mixture of the Salic law of the Franks, the feudal principles and the Roman civil law. Religion was no longer the ritual of the church, but a faith for which men and women unhesitatingly gave up all earthly possessions and even life itself. Contemporaneously with the opening of the new world to view and the discovery of a water route to India and the east, there was an awakening to new conceptions of all things. The desire to discover new truths, to look deeper into nature and know more of man and of the moral obligations resting on him, was growing. This desire prompted inquiry, which at the same time produced turmoil and advancement. Though without any system of public schools for the multitude, France then occupied a leading position in its educational institutions. The great University of Paris, which had its beginnings in the twelfth century, had developed into a large institution, where many branches of learning were taught. Other universities had also been established at Montpellier, Toulouse, Orleans, Angers, Avignon, Cahors and Grenoble,

some of which were in a flourishing condition. The civil law, medicine and religion were taught. From all these schools some light was diffused through the intellectual darkness, and most important of all, a growing appetite for truth and an increasing perception of the vices and immoralities of the age. The printing press had come to give its powerful aid in spreading information. While the high clergy were often intent only on their own personal aggrandizement, there were many students who in reading the Scriptures discovered, not merely the alluring promise of bliss in a life to come, but also the practical lessons of morality and the sublime virtue of the golden rule as a means of improving man's condition here on earth. The sixteenth century exhibits, often in the same individual as well as in the contentions of parties and factions, the struggle between the old savagery and barbarism in their most vicious forms, and conscience newly awakened to the command to love your enemies. The religious struggle in France was not between different states or sections of the country, but between neighbors. Men either followed the path of the reformation or adhered to the dogmas and the mastery of the established church, according to their mental bias and surrounding influences. It is difficult in this age to comprehend the feelings of Protestants and Catholics in those times. Protestants were appalled at the immoralities of the church and believed that nothing but eternal damnation could be meted out to those, who under the guise of religion were guilty of so many misdeeds. Catholics felt that Protestants were seeking to tear down that church to which they looked for protection and safe passage into a life of bliss to come. Generation after generation had lived and died in blissful confidence in the ability of the priest to pass the dying soul safely through purgatory into heaven, and the belief that without the aid of the church man was without hope. Deadly strife always develops hardness and cruelty, but religious wars and persecutions are always more cruel and unrelenting than others.

During the reign of Francis I there were eighty-one executions for heresy in accordance with judicial decrees. In

1545 a great number of Vaudians, estimated at 3,000, were ruthlessly massacred because of their religious opinions. During the twelve years reign of Henry II there were ninety-seven convictions and executions for heresy. Though in some cases the proceedings were very summary and execution followed arrest quickly, in most the proceedings were deliberate, and it cannot be doubted that many people believed that heresy was a crime meriting death. The study of the law had made such progress that the lawyers were already an important factor in the state. The highest court was the parliament of Paris, which not only exercised judicial functions, but was the medium through which all edicts of the King or Pope having the effect of laws were registered. Parliament itself was not a law-making power, but it sometimes interposed obstacles to obnoxious enactments by refusing to register them. The kings overcame the difficulty by causing registration to be made without the sanction of Parliament, but when in 1557 the papal bull was issued establishing the Inquisition in France, the Parliament refused to register it. In 1559 this Parliament was composed of one hundred and thirty members, and in 1602, when Biron was condemned, one hundred and twenty-seven voted for the conviction. The religious struggle attained its most fierce manifestation in the Massacre of St. Bartholomew's Eve on Aug. 4, 1572, when the Protestants in great numbers were butchered by the order of Charles IX. The number is variously estimated from 10,000 to 100,000. It was the purpose of Charles to exterminate the Huguenots at one stroke and thus end the religious strife, but in this he signally failed. The moral sense of the Catholics was violently shocked, and all Christendom condemned in unmeasured terms the bloody butchery. The religious struggle continued throughout the reign of Charles IX, which ended with his death in 1574, and of his successor Henry III, 1574 to 1589. To the influence of Catharine de Medici, the Italian queen mother, was charged many of the evils with which the state was afflicted. In 1575 the Holy League, which had been first conceived in 1562, came into prominence, and on the other side the Protestants were not wanting in numbers or

leadership. At Paris the Catholic League partitioned the city into five districts with a head man for each, who soon added to their number eleven others. This formed the committee of sixteen, which played an important part in the religious war. In 1588, when Henry III undertook to garrison the city, this committee, under the leadership of the Duke of Guise and backed by the populace, barricaded the streets of Paris and caused the king to seek safety in flight. On Oct. 6, 1588, the States-General, composed of one hundred and eighty nobles, one hundred and thirty-four clergymen and one hundred and ninety-one members of the third estate, were convoked at Blois. Nothing of importance was accomplished by the session, which ended Jan. 10, 1589. The King caused the Duke of Guise to be murdered, but the death of the leader did not destroy the League. The Parliament of Paris sided with the Leaguers, and the parliaments of other chief cities did likewise. The Duke of Mayenne, who succeeded to the Catholic leadership, organized a council general of the League, composed of forty members, for the general direction of its affairs. The struggle between Catholic and Protestant was popular in character and not merely the quarrel of leaders. The league had its committee and was backed by the populace at Paris. The Protestants on the other hand were asserting their right to religious liberty, and in doing so were forced to deny the temporal power of the king when exerted to compel submission to the established form of worship. It was an assertion of individual liberty, though without a clear conception of the significance of the claim.

The assassination of Henry III by a fanatical monk made Henry of Navarre, a Protestant, heir to the throne. The Catholics were still largely in the majority and Henry, who had been the recognized head of the Protestants, had a difficult task before him; but with the force of the sentiment of loyalty to the legitimate heir to the throne and a wise policy of toleration of religious differences, he accomplished good for the state and the substantial restoration of domestic peace. His principle of toleration was a principle of liberty of conscience, religious thought and expression. The edict of



Nantes, which he published on April 13, 1598, was a great stride forward, though it did not accord entire equality or freedom in religion. By it the Protestant form of worship in the castles of the lords high justiciary, who numbered 3,500, was allowed, and also in the castles of simple noblemen, provided the number present did not exceed thirty. The state was charged with a provision of 165,000 livres for salaries of Protestant ministers, and donations and legacies for their support were permitted. The children of Protestants were admitted to the schools and universities. The Parliament being intensely Catholic there was great difficulty in obtaining justice by the Protestants, and a special court, called the edict chamber, was established for the trial of causes in which they were interested. Catholic judges could not sit in this court, except with the consent of the parties. In the Parliaments of Bordeaux, Toulouse and Grenoble, the edict chambers were composed of two presidents, one Catholic and one Protestant, and twelve councillors equally divided. The Protestants retained control of the towns then in their possession, numbering great and small about two hundred, and their garrisons and fortifications were maintained at the public charge. After his accession to the throne Henry found it easier to rule as a Catholic than as a Protestant, and in 1593 became a Catholic and was received into the Church. He issued this edict as a Catholic monarch for the pacification of his kingdom, and as a measure of justice to his subjects. Henry is also credited with a comprehensive plan for the pacification of all Europe by confederating all the Christian states, Catholic Lutheran and Calvinist, with equal rights. The plan contemplated independence in local affairs, the care for common interests through central authority and the pacific settlement of all disputes between states. The recent Hague conferences are steps toward the realization of a world wide union of this kind. The barbarism of a division of the continent into so many hostile camps must some day be generally recognized, the simple remedy of efficient coöperation and combination for the general good be adopted, and all the vast armies which now sap the life of each nation and periodically spread death,

destruction and misery over the land, be disbanded to aid in promoting the general welfare. The curse of militarism may be removed merely by the extension to national disputes of the principle of the decision of controversies by reason and the judgment of disinterested men, as controversies between individuals and subdivisions of a state are now settled. In Henry's foreign policy the principle of religious toleration played an important part. To check the power of Austria he allied Catholic France with Protestant Germany and England against Spain and Austria. Under his rule there was a growing respect for law as well as an increased measure of liberty. When he became convinced that Biron, who had long been a favorite with him, plotted against his authority, instead of directing his execution arbitrarily, as Charles IX had commanded that of Coligny and the Huguenots and Henry III that of the Duke of Guise, he caused him to be publicly tried. The inquiry lasted three weeks, and the one hundred and twenty-seven judges in the Parliament of Paris unanimously condemned him. Doubtless the accused stood at great disadvantage in a trial with the king as accuser, and the tribunal could hardly be called an impartial one, but strict impartiality, absolute freedom from all bias, is hardly to be found, unless the matter tried is of utter indifference to the judge. It is greatly to be regretted that in his private morals Henry was conspicuous for weakness rather than strength of character, yet in spite of this blemish he stands out as a truly great public character, who labored earnestly and successfully to protect the public good, not only of his own kingdom but of all Europe. During the regency of Marie de Medici, widow of Henry IV, and the reign of Louis XIII, Richelieu promoted the system of absolutism, which attained its highest stage under Louis XIV. The power of the feudal lords had been waning for more than a century. Under the ministry of Richelieu all eyes became steadily fixed on the king as the fountain of all power in the state, and the ambitious nobles were taught to seek advancement through the favor of the king, rather than the power of their armed retainers. Though Henry IV had had his councillors, no ministry with a distri-

bution of well defined powers and functions had been established. Nor did Richelieu develop such a system. His policy was directed toward the advancement of the kingly authority at the expense of the nobility, and to the exercise of power through officers appointed by the king for their fidelity, rather than their rank. The Parliaments, of which at the accession of Richelieu to power there were nine, namely, of Paris, Toulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix, Rennes and Pau and to which he added Metz, at times manifested some degree of independence and assumed powers to regulate taxation and give advice to the king. In 1641 Louis XIII published an edict prohibiting the Parliaments from interference in affairs of administration and confining them strictly to judicial functions. Though there were refusals to register edicts by some of the Parliaments, opposition was crushed and the king's unrestricted power enforced. There were, besides the states general of the whole kingdom, states provincial in Languedoc, Brittany, Burgundy, Provence, Dauphiny and Pau, through which these districts levied the taxes on themselves. These states provincial were convoked by the king and varied in their composition according to the district. Richelieu's policy was to curtail the power of the states and take away all restriction on the king's control of his finances. He established in each province overseers of justice, police and finance, chosen mostly from the burgesses, into whose hands the whole administration of local affairs was committed. By an edict of July 31, 1626, all the old castles of the great nobles were demolished, and through these overseers the powers of the nobility in local affairs were effectually curtailed. Only twice in his time did Richelieu convoke the Assembly of Notables, in 1625 and 1626. On Feb. 24, 1627, the last Assembly separated and was never again convoked till the revolution of 1789.

On the death of Richelieu another cardinal, Mazarin, an Italian, took his place and, though he encountered intense hostility and much internal commotion and external war, he died with the full confidence of Louis XIV and as premier wielded the actual power of the king. On his death in 1661

Louis assumed the duties of his office and notified his ministers that they were only to act on his command. In his reign was commenced the systematic distribution of administrative functions, with a secretary for foreign affairs, one for war and the army and another for finance. Neither of these had independent authority, but all worked under the king. Louis XIV had ideas of order and method superior to those of his predecessors. He labored to gather information and to direct the action of all his officers. He was the sole source of authority, and in the selection of his agents he sought to humble rather than elevate the great folks. The nobles however still held title to the land, and through its ownership were able to grind the poor to starvation. Louis with the aid of able ministers greatly curtailed the diversion of moneys collected as taxes into private pockets. By this means his revenues were increased and taxes lightened. The beginnings of the actual exercise of kingly power by Louis contained much that was good. He did much to develop an orderly government, with a head laboring daily for the welfare of the state, as he understood it. But Louis sought first of all his own aggrandizement. He was lavish in the expenditures of his court, but he built palaces and public works that were both useful and ornamental. Like most despots however, he sought to extend his power over his neighbors. The Netherlands, Germany, Spain and Italy were subjected to his encroachments, and no sooner had his country begun to feel the advantages of his firm rule than he plunged it into war. The early period was one of glory (so called), for France. Her boundaries were advanced, and she took her place as the first power in Europe. But however great the successes in battle the drain of men and money in great wars necessarily impoverishes the nation, and the later years of the reign of Louis were years of misery among the people and disaster, defeat and loss of prestige in war. Religious toleration, established by the edict of Nantes, and which had done so much to pacify France, came to an end in 1685, when Louis revoked the edict and drove out the Huguenots, to become either soldiers in the armies of his enemies or industrious

workers, furnishing money and supplies to them. The long reign of Louis was one of thoroughly recognized right of the king to rule, freed from all dictation and interference by the aristocracy. Obedience to him was considered the duty of all. The plenitude of the king's power and his love of displaying it drew to his court all the rich and high born of the kingdom. The magnificence of his court was noted throughout Europe. Nowhere else was there such an exhibition of wealth and luxury. Internal peace was the marked evidence of advancing views of social duty. Foreign war and military glory still offered the most alluring field for the ambitious, yet the age was one of intellectual awakening and the great names are not alone of soldiers, but of authors, artists, scientists and philosophers. Though nothing like attacks on the established system was tolerated, writers and teachers did not fail to discover and declare some of the moral truths bearing on the obligations of the ruler to the ruled. Priests taught virtue a little more and persecuted heresy far less. The luxury and magnificence of the court, to which all the great landowners gathered, withdrew from their estates whatever advantage might have resulted in their management from the education and intelligence of the owners, and left them to the care of impoverished peasants. To maintain great houses at Paris and Versailles, buy the gorgeous and expensive costumes of the time and give costly banquets, required the whole product of the estates. The peasants who did all the work were mercilessly robbed of the fruits of their toil, in order that the butterflies at the palace might appear in dazzling brilliancy. Order, obedience and law prevailed, but applied law in its aggregate results meant monstrous injustice, systematically and mercilessly enforced. Unfortunately this is by far too true of all systems of human laws. The idle favorites, who swarmed about the court fawning on the king for favors, were mostly quite without merit. True there were some such lofty natures as Fenelon, Pascal, Bossuet, Madame de Sevigne, La Bruyere, Moliere, Corneille, Racine, La Fontaine and other thinkers and writers, who were more or less about the court, whose plantings in the moral vineyard have

borne good fruits, but the recipients of the great bulk of royal bounty were worse than mere idlers. They were conspicuous examples of the corruption of a despotic system, living not merely useless, but debauched and vicious lives, not from the bounty of a rich king as the historians usually state it, but from the fruits of the labors of the needy poor, wrung from them either by the public tax gatherers on pretense of payment for public service, or as the share of the produce belonging to a landowner through a most unjust legal theory of ownership of the earth. Viewed at large the nation exhibited a brilliant court, permeated with moral pestilence, and a vast multitude of ignorant and spiritless toilers, who labored and died in misery and degradation. Happiness had no abiding place. At court all was a fever of hopes and fears, hanging on the smiles and frowns of a king.

Though Louis was king till his death, and though he never ceased to give personal attention to public affairs, the idea contained in the memorable expression "I am the state," gained a constantly increasing force in his mind, till the welfare of the people he should have served ceased to be a matter of consideration, and France became in his eyes but a setting to display his grandeur and power. As his life drew towards its close he witnessed without profit the necessary results of his policy. The peasants, artisans and traders were impoverished and reduced in numbers by wars and oppressive burdens. The court demanded increased favors to sustain its gaieties. Foreign enemies combined against him, and his exhausted armies retired before them. Lack of troops and of money paralyzed the state, and famine and pestilence scourged the people.

In 1715 after reigning seventy-two years Louis XIV died, leaving the crown to his great grandson, a child five years of age. The will of the King, which made his illegitimate son, the Duke of Maine, guardian of the young King, and appointed a council or regency, was promptly swept aside by the Duke of Orleans, who, with the approbation of the Parliament of Paris and the populace, assumed the regency, freed from the restrictions with which the late King sought to cir-

cumscribe it. The regent attempted to organize a ministerial system with six boards, for foreign affairs, army, navy, church affairs, home affairs, and finance. To these were afterward added one for commerce. At the head of these, instead of men chosen on account of their fitness for work, he selected persons of rank, under whom men of inferior degree, but more capacity, were placed. The plan proved unsuccessful through lack of merit in his appointees. The scheme of Law to relieve the financial difficulties of the time, which has met with such severe and oft repeated condemnation, and which was productive of so many imaginary fortunes and so much real misery, yet had within it the idea, which has since been often utilized, of substituting credit paper for coin. His disastrous failure resulted more from the avidity with which the people took his shares and turned in their money, than from the inherent vice of the scheme. Most of the business of today is transacted on the theory that there is coin on deposit to pay credit balances due from banks and other financial institutions. As a matter of fact there is ordinarily about one dollar for every ten of debt in the aggregate of the banks, but this in ordinary times is sufficient. Confidence now supplies the place of coin. In Law's time confidence was excessive at first, but the panic quickly followed, and against panic there is no security. The Mississippi company might have been given a basis of real value equal to the wildest dream of Law, but it was in fact but a bubble too frail to stand the first prick of criticism.

In 1724 an edict was issued in the name of the young King, ostensibly as a tribute to the memory and to carry out the design of Louis XIV to extinguish heresy. This edict condemned "Preachers to the penalty of death, their accomplices to the galleys for life, and women to be shaved and imprisoned for life. Confiscation of property; parents who shall not have baptism administered to their children within twenty-four hours and see that they attend regularly the catechism and the schools, to fines and such sums as they may amount to together, even to greater penalties. Midwives, physicians, surgeons, apothecaries, domestics, relatives,

who shall not notify the parish priests of births or illnesses, to fines. Persons who shall exhort the sick, to the galleys or imprisonment for life according to sex; confiscation of property. The sick who shall refuse the sacraments if they recover, to banishment for life; if they die, to be dragged on a hurdle." Notwithstanding this savage language the blood-thirsty spirit of St. Bartholomew's Eve no longer prevailed in the land, and there was little disposition to rigorously enforce this edict. It was only here and there that its barbarities were carried into effect. The general sentiment of the people had moved forward to higher ground. Louis XV exhibited in marked degree the inherent weakness and vice of absolute rule. He was indolent and voluptuous, though not cruel as despots go. It is always impossible for a single man to know the needs of a great country, no matter how energetic and earnest he may be, but when that man is inert the state is left to drift, and always drifts into confusion and misfortune. Though France coveted dominion in India and America, there was no strong combination of vigorous men working in concert to maintain it. An idle king and ministers, whose main purpose was to live in ease and luxury, neglected giving needed support to the adventurous spirits, who labored to extend French power, trade and influence in the east and west. England with its navy had become master of the sea, and a dissolute court had not the foresight and self-denial to expend the revenue in building a navy, but it was squandered in luxurious living. India, Canada and the valley of the Mississippi were lost, and passed under the rule of its great rival, England. Continental wars wasted blood and treasure without profit. The Seven Years' war, formally declared by France against England in January 1756, involved before its conclusion Austria, Prussia, Russia, Spain and Italy and, though fought mainly in Germany, impoverished and exhausted all Europe. Prussia bore its heaviest brunt and Frederick the Great estimated that the participants lost 800,000 men. The French court is well described by Montesquieu.

"Ambition amidst indolence, baseness amidst pride, the desire to grow rich without toil, aversion from truth, flattery,



treason, perfidy, neglect of all engagements, contempt for the duties of a citizen, fear of virtue in the prince, hope in his weakness, and more than all that, the ridicule constantly thrown on virtue form, I trow, the characteristics of the greatest number of courtiers, distinctive in all places and at all times."

The very firmness with which the doctrine of absolutism had been riveted on the French people, under a weak and indolent monarch such as Louis XV, afforded the example and the opportunity for successful attack upon it. King and court were morally and intellectually weak, but there was growing strength among the people. Students and philosophers were already looking behind and beyond the written edicts, canons and decrees, for the living truth as the only just basis of authority. Enlarged intercourse with the people of other European states, with the new world in America and the old in India and the east, stimulated inquiry and research into every field of knowledge. There were many active brains in France busily at work. Montesquieu, Buffon, Voltaire, Rousseau, Diderot, Alembert, Fontenelle are great names. In seeking new truth they discovered old error. The falsity of the claims to dominion over mens thoughts and consciences, their lives and property, became apparent. The falsity of the claim of superiority, which had so long supported the king and those who thronged his court, could no longer be concealed. Vice and immorality appeared as such though practiced by kings, cardinals and courtiers. The courts too, where questions of right were daily discussed, though blinded by adherence to established rules by which they were bound, whether right or wrong, at least perceived that the king ruled only by force of law, and that he too was therefore inferior to law. The first internal struggle leading up to the great revolution was with the Parliaments and over questions of taxation. This led to the arrest of the judges and finally to the dissolution of the Parliaments and the complete reorganization of the judiciary in 1771. Louis brooked no questioning of his power. He had said to the Parliament of Paris, "The magistracy does not form a body or order separate from the

three orders of the kingdom, the magistrates are my officers. In my person alone resides the sovereign power, of which the special characteristic is the spirit of counsel, justice and reason; it is from me alone that my courts have their existence and authority." How little did he understand his own weakness and the growing strength and increasing knowledge of the people.

He died in 1774, and his grandson Louis XVI at the age of twenty came to the throne with Maria Antionette, daughter of Maria Theresa of Austria, as his queen. He was a weak but kindly man, neither great or strong enough to direct the affairs of so great a state. He had the fortune to call to his aid some strong and honest ministers, who introduced reforms in the finances beneficial to the state, but correspondingly destructive of the system by which the court favorites obtained their greatest incomes. Turgot first and then Necker were able men, who sought to do the country honest service; but the corrupt courtiers gave them no rest and finally obtained their dismissal. The American Revolution, following on the discussions of such writers as Voltaire and Rousseau, produced a profound impression on the public mind. The opportunity for checking the growing ascendancy of England, even though to do so required an alliance with rebels, who in declaring their independence had denied the doctrine of the divine right of kings and in its place asserted that all governments derive their just powers from the consent of the governed, was too tempting to be neglected. Bourbon France and Spain, exponents of the doctrine of unlimited monarchy, joined forces with the freemen of America against England. The result in America was the birth of a great republic, which became the model of all the states of the new world. Not less profound was the impulse given to the growing conceptions of liberty in France. Already disgusted with its decaying despotism and longing for a new national life, the nation seized with avidity the inspiration and sought at one bound to gain the lofty pinnacle of "liberty, equality and fraternity." The King was a reformer but without much knowledge of affairs or steadiness of purpose. At the in-

stance of Necker he abolished mortmain and serfdom on the royal estates, put an end to the preliminary tortures to which defendants were put by the soft name of the "preparatory question" and caused more humane treatment of those confined in prisons.

The age of intrigue for mere power had passed, and the love of wealth and display was the overmastering passion of courtiers. Financial difficulties, arising from the inordinate demands for money to waste in vain display rather than for legitimate governmental uses, were sources of anxiety to the King and his ministers. The nation was vitally interested in the reforms proposed by Turgot and Necker, but the favorites were equally interested in defeating them, and were an active force. Public sentiment was without coherence or steadiness. The court constantly called for more money. The people resisted increased taxation. On Dec. 29, 1786, Louis announced in council that he would convoke an assembly of notables on January 29 "to communicate to them my views for the relief of my people, the ordering of the finances and the reformation of abuses." The session did not open till Feb. 22, 1787. It was not a representative body, but composed of one hundred and forty-four members, all named by the King as follows: seven princes of the blood royal, fourteen archbishops and bishops, thirty-six dukes and peers, twelve councillors of state and masters of requests, thirty-eight judges, twelve deputies of states districts and twenty-five municipal officers. When this assembly convened the fact that France had outgrown despotism became apparent. The public demanded an account of the conduct of affairs, and to know what became of the revenue before undertaking to provide a greater one. An annual deficit of 100,000,000 livres a year had been steadily forcing the treasury into deeper and deeper embarrassment. The session closed on May 25, 1787, without any other result than increased publicity of the financial situation and a more widespread understanding of the nature and extent of the abuses which prevailed and by which the privileged nobles, tax farmers, monopolists and court favorites grew rich at the expense of all the industrial classes. The Assembly left

the King to deal with his difficulties the same as before. His edicts relating to the stamp tax and territorial subvention were registered, and then the registration was declared null by the Parliament of Paris. The King sent the Parliament away to Troyes. The growth of the idea that all were subject to law was expressed by a decree of the Parliament, in which it was said, "The monarchy would be transfigured into a despotic form if ministry could dispose of persons by sealed letters, property by beds of justice, criminal matters by change of venue or cassation and suspend the course of justice by special banishments or arbitrary removals." Though the principles thus declared may meet approval, they were invoked to sustain privilege rather than to enforce justice. But the idea that the land and the people belonged to and existed for the king and his court was fast being supplanted by the better one that the government, whatever its form, must serve the people and promote their welfare. Though we read so much of the difficulties with which the government was surrounded, those difficulties did not have their basis either in exceptionally bad natural or business conditions, nor in the ambitions of rebellious subjects, but in the fact that the nation had outgrown its governmental system and demanded better principles and more efficient execution of them. The nation clamored for the States-General, the ancient representative body of the kingdom. On Aug. 6, 1788, a decree was promulgated for their convocation on the ensuing 1st of May. There was much agitation of the questions as to their composition and the representation and mode of choice of the Third Estate, the only representative of popular elements. An Assembly of Notables was again convened Nov. 6, 1788, but adjourned on December 12 without accomplishing more than the discussion and agitation of the general subject of governmental and financial reform. The composition of the States-General was finally determined by the King as follows, 1. There should be at least 1,000 deputies. 2. That the number should be formed as nearly as possible in compound ratio to the population and taxes of each haliwick. 3. That the number of deputies of the Third Estate should be equal to that of the two other orders

together. They were convoked for April 27, 1789. Later the number was fixed at 1,200; citizens who were taxpayers were declared electors. The elections caused a ferment throughout the provinces, the like of which had never before been known in any country. The King desired to effect reforms; but was without a definite policy. He had called together representatives of the nation to consider and provide for its needs with no further preparation than a partial understanding of the gross abuses of the decaying monarchy. Naturally and logically the first inquiry was directed toward ascertaining what was wrong. The one overshadowing fact disclosed to even dull minds was the unmerited power and privileges of the nobles and high clergy and the lavish extravagance of the court. Bad harvests aggravated the distress of the poor, but never before had so much been done by the king and the rich to relieve them. Charity did not satisfy, when the poor laborer was taught by the agitators that his rights were equal to those of the idle court favorites.

Though it is not often mentioned, the American colonists derived their ideas of personal liberty and individual dignity to some extent from the Indians, who absolutely denied the authority of rulers. The dissemination of American ideas, thus taken from the savages, among a people of most lively sensibilities, was greatly facilitated by the students and admirers of Greek and Roman liberty. The philosophers had prepared the way for the repudiation of monarchical corruption. The nation was ready to condemn the bad government and the false theory of class superiority and robbery with which it was oppressed, but it was not prepared to construct a new system. When the States-General convened, separate rooms were provided for the noblesse and the clergy, but the Third Estate, equal in numbers to both, had only the throne room, intended for the joint meetings of the three orders, in which to assemble. The verification of credentials of members was left to the assembly itself, as well as the question whether the sittings should be in one or separate chambers. The Third Estate, representing the common people, was in possession of the assembly room, and after inviting the other

orders to attend proceeded to determine who were entitled to seats, admitting such of the inferior clergy and nobility as chose to come in. They chose the name of National Assembly, by which this most memorable gathering is known in history. When the session was opened by the King at Versailles on May 5, there were about 1,100 deputies present, of whom 595 belonged to the Third Estate; and of these three-fifths were lawyers.

The States-General had been summoned by the King to aid him with money and to still the complaints against abuses, but when convened it proceeded to act, not as an aid to a sovereign king, but as the representative of a sovereign people. On June 20, after having undertaken to annul all the decrees of the Assembly, the King caused the doors of their hall to be closed and decreed a royal session on the 22nd. The Assembly met nevertheless in a tennis court and passed a decree, "That the National Assembly considering itself called to determine the constitution of the kingdom, to effect the regeneration of public order, and to uphold the true principles of the monarchy, declaring that nothing shall prevent its continuing its deliberations, and that wherever its members are united, there is the National Assembly; Decrees that all the members of this Assembly shall this instant take a solemn oath never to separate, until the constitution of the kingdom be established and confirmed upon solid foundation." All the deputies but one took the oath. On the 22nd, the royal session not taking place, they assembled in the church of St. Louis, where the majority of the representatives of the clergy joined them, one hundred forty-eight in number. On the 23rd the King opened the session with a speech and caused a declaration to be read declaring null all acts of the Assembly and limiting their deliberations to certain subjects, mainly relating to taxation; adding, "None of your projects, none of your ordinances, can have the authority of law without my special approbation. I command you, gentlemen, to adjourn immediately, and to appear to-morrow morning, each in the chamber appropriated to his order, to resume there the usual sessions." The king left, followed by the nobility and part

of the clergy, but the Third Estate remained. The grand master of ceremonies said to Baillie, president of the Assembly, "Monsieur you have heard the King's orders"? Baillie replied "I cannot dissolve the Assembly until it has deliberated upon the matter. I believe that the assembled nation can receive no command." This was revolution. It denied the sovereignty of the King. On the 24th, forty-seven noble deputies with the Duke of Orleans at their head took seats in the Assembly, and on the 27th the King, overawed by the popular tumult at Paris and the desertion of the French guard, who sided with the populace, to secure his own safety requested the nobles to repair to the common hall, which they did.

Who can adequately describe the awakening of a great nation after many centuries of tyranny, maintained in accordance with rules called laws, which their teachers both spiritual and temporal have taught the people to obey as of divine origin and sanction, to a realization of the monstrous falsity of the whole system. The idols were broken and found to be but base impostures. The ferment spread throughout the nation as the great leaders of the Assembly boldly declared the self-evident truths of liberty and justice. The fruits of the teachings of Montesquieu, Fenelon, Rousseau and Voltaire ripened all at once in the hot house of the Assembly. In Paris the most exalted aspirations of pure patriots for an age of justice coöperated with the hatred and savagery of the dregs of society, who called for vengeance on those they deemed the cause of their degradation. The Assembly led the march of ideas grandly at Versailles, but the ferment went on in the multitude at Paris. The courtiers looked to the army to preserve the King's authority and protect them. The revolutionary forces in Paris organized. There were the electors, the Orleans party and the Breton, afterwards called the Jacobin Club. On July 11 the King dismissed Necker, the only minister in whom the people had confidence. On the fourteenth of July the Parisians broke into the Dome des Invalides, seized 2,800 guns and stormed the hated Bastille, the prison fortress, which stood as a symbol of tyranny, and at once proceeded to demolish it. There were lives lost in

the combat and faithless executions of prisoners taken, whose blood the mob demanded. The national guard was organized by authority of the Assembly and the districts of Paris with La Fayette at its head. Uprisings were not confined to Paris but spread throughout the provinces and were everywhere directed against those who profited by the abuses of the old régime.

The Assembly proceeded with its deliberations, which reached a climax on August 4, expressing at one session the condemnation of a vast system of oppression. From 1614 till 1789 the nation had not been consulted in regard to public affairs, despotism and privilege had flourished at the expense of the people. No wonder that the King and the representatives of the people were so wide apart in their purposes. The King looked only from the standpoint of long recognized power. The assembly was profoundly conscious of the gross and manifold abuses of that power. The King wished increased revenues and tranquil submission to authority. The people demanded relief from excessive burdens and some measure of justice. The many lawyers of the Assembly understood the laws and appreciated the inequity of them. Many of the nobility and clergy recognized the moral indefensibility of their great privileges. On the evening of this memorable session the Viscount de Noailles, speaking to the demand of the government that a decree be passed to put an end to the disturbances in the provinces by inviting the people to obey the ancient laws till modified, declared that the only means of restoring peace was to decree immediately a proportional levy of taxes on all citizens ratably, the adjustment of farm rents on the basis of income and the abolition of statute labor, mortmain and all personal servitude. This blow at feudal privilege was seconded by the Duke d' Aiguillon, the richest nobleman of France. No voice was raised in defense of feudal injustice. Then it was demanded that the recipients of royal favors, the court seigniors, should bear their part. The Dukes of Guiche and Mortemart replied that they were ready to renounce the king's benefits and share the common burdens. Then privilege after privilege was attacked in rapid



succession. Employments were opened to all citizens alike, and penalties for crime were made the same to all classes. Feudal courts, through which the nobles were judges over their vassals, were abolished. Hunting rights, enjoyed only by the nobility, were opened to all. Then came the turn of the clergy; the cures were shorn of their perquisites, and the bishops of their titles. Having disposed of the privileges of the nobles and clergy, those of the provinces and cities were brushed away, and the deputies for Brittany, Provence and Languedoc, and for Paris, Marseilles, Bordeaux and Lyons renounced all their great advantages with respect to imposts. Then came the suppression of the privileges of freemen and tradesmen in the monopoly of work. Thus in a single night sitting from 8 P. M. to 2 A. M. fell the whole system of privileges, and in its place stood the great French nation composed of citizens, each with equal rights before the law. Never in all time was an equal number of abuses exposed and laid low by any representative of a nation at a single session. Radical, thorough and far-reaching as these measures were, they were all clearly and unqualifiedly right, and this accounts for the celerity with which each abuse fell in its turn.

On the twenty-sixth of the same month the great work of the fourth was supplemented by the adoption of the following Declaration of the Rights of the Man and of the Citizen. "1. Men are born and remain free and equal in their rights. 2. These rights are : liberty, property, safety and resistance to oppression. 3. The principle of all sovereignty resides in the nation. No body, no individual can exercise authority not emanating directly from it. 4. Liberty consists in the power to do all that which does not injure others. 5. Law has the right to forbid only actions detrimental to society. 6. Law is the expression of the general will. All citizens have the right to concur personally or through their representatives in its enactment. It should be the same for all, whether it protect or whether it punish. All citizens being equal in its eyes, are equally admissible to all dignities, public places and employments, according to their capacity, their virtue and their talents. 7. No man can be accused, arrested

or imprisoned save in cases determined by law and according to the forms it has prescribed. 8. The law should establish only penalties strictly and evidently necessary, and no one can be punished save in virtue of a law established and promulgated before the offense and legally applied. 9. Every man being presumed innocent until he has been proven guilty, if it is judged indispensable to arrest him, every rigor not necessary to secure his person should be severely reprov'd by the law. 10. No one shall be disquieted on account of his opinions, even his religious ones, provided their manifestation does not disturb the public order established by law. 11. The free communication of thoughts and opinions is one of the most precious rights of man. Every citizen can therefore speak, write and print freely, except he abuse his liberty in cases determined by law. 12. The guaranty of the rights of the man and the citizen necessitates a public force. 13. For the maintenance of the public force and for the expenses of administration, a general tax is indispensable. It shall be equally divided among all citizens, in proportion to their ability. 14. All citizens have the right to aver of themselves or through their representatives the necessity of the public tax, to freely consent to it, to watch over its distribution, to determine its quota, its assessment its collection and its duration. 15. Society has the right to demand of every public agent an account of his administration. 16. Every society in which the guaranty of rights is not assured, nor the division of authority determined, has no constitution. 17. Property being an inviolable and sacred right no one can be deprived of it, unless when public necessity legally averred, evidently demands it, and under the condition of a just and previously arranged indemnity."<sup>1</sup> This was the grandest chart of liberty and justice ever proclaimed, but the struggle to enforce its precepts was yet to come. To give form to a reorganization of society, which should secure the enjoyment of these principles, was a task of far greater difficulty than to formulate and declare them. The heart of the nation responded admirably to the lofty sentiments of the Assembly, and, though

<sup>1</sup> Martin, 1-60.

there were conflicts in various quarters, the desire for a new order of things was general. Everywhere the people proceeded to reconstruct and organize. The cities chose their magistrates, and the national guard was organized throughout the provinces. The Assembly undertook to reconstruct the whole system of government. The old Parliaments were abolished and a graded system of courts, from justices of the peace with jurisdiction in petty cases to a court of cassation with jurisdiction for the correction of errors of law over the whole nation, was devised. Intermediate were the district courts, composed of judges elected by the people. Jury trial was provided for in criminal cases. Commercial tribunals for the merchants were also established. In place of the ancient thirty-two provinces the country was divided into eighty-four departments, each of which was divided into districts and these into cantons. Primary assemblies were to be held in the cantons, which were to choose members of the departmental assembly, and these were to name the members of the National Assembly. The suffrage was restricted to citizens twenty-five years of age, who had lived one year in the country, paid a direct tax amounting to three days labor and who were not hired servants. Local self-government was provided through representative bodies in the cantons, districts and departments. The king had the right to suspend local administrations not in accordance with his orders for the execution of the laws, but subject to confirmation or abrogation by the Assembly.

The spontaneous movement of the people in the direction of reorganization did not stop with the choice of local officers and the organization of the guard. To defend against lawless bands and apprehended dangers they formed leagues one with another. This movement began in September 1789 and continued till the Federation spread throughout all France as a pledge and bond of concord and union. On July 14, 1790, the anniversary of the taking of the Bastille, a grand festival was held at Paris, attended by 15,000 deputies representing the national guard and 11,000 soldiers and sailors from the army and navy. The event was a joyous one. La Fayette in

the name of the national guard took the civic oath, and the King said from his throne, "I King of the French, swear to uphold the constitution decreed by the National Assembly and accepted by me." A great banquet and fete followed. The revolution seemed to have been accomplished, and the spirit of concord and fraternity prevailed everywhere. This transport of lofty sentiment presented a spectacle not to be decried because of the terrible days that were to come. It was a day's realization of a possible future, only to be made permanent by a long struggle and much suffering. In December 1789, in order to supply funds for the pressing necessity of the state, it was resolved to sell the lands and buildings belonging to the Crown,—except the palaces and forests,—and part of the church property which had been declared to belong to the nation; but as this would require time, negotiable bonds amounting to 400,000,000 livres were issued and secured by a pledge of this property. As they were not readily accepted, they were given a forced currency. In September 1890, financial difficulties having still increased, a further issue of 800,000,000 was authorized. The scheme of Law in substance was thus again resorted to.

While the just principles of the revolution commended themselves to the moral sense of the people generally, ancient prejudices and the habits and opinions passed down from generation to generation could not be eradicated in a day or a year. The nobility had been accustomed to despise all useful labor, to scorn all activities but those of war and the court. Their personal following had been accustomed to look solely to them for employment and support. The structure of society could not be demolished and reorganized at a single stroke. More deep seated still was the reverence for the established church, to which a great majority of the people adhered. Religious habits are strong everywhere and among an unlearned people, such as the masses of the French then were, the influence of the clergy is very powerful. When confronted in the Assembly by the brilliant leaders of the revolution, the representatives of the priesthood had yielded to the demands of justice, but when the body of the clergy were

called on to give up the great properties and privileges they had so long enjoyed, selfishness again resumed its sway, and the sacredness of ecclesiastical rights was asserted in opposition to the authority of the Assembly. The Pope too interposed his authority against the destruction of ecclesiastical privilege. The great multitude of priests high and low had been accustomed to a certain scale of living at the expense of the people. To adjust themselves to a complete change of system was no easy task, and all the inertia of a great and long dominant religious establishment was opposed to the new order of things. Though many individuals among the priesthood were most zealous and intelligent reformers, and though a large portion of the representatives of the clergy had joined with the Third Estate in the most radical measures of the Assembly, the great church organization still stood riveted to the traditions and prejudices of the past and hostile to the attacks on its great abuses of privilege.

The nobles, though many of them had been carried along by the waves of lofty sentiment that ruled the Assembly, and though among them were earnest and thoroughly determined reformers like La Fayette, were still as a class tied to all that was bad in the structure of society. Deprived of their great privileges, many of them were simply contemptible as men. Without a habit of useful effort or a desire to do good in the world, they found themselves cast down from their positions of superiority and rated at their true value. Intrigue for unmerited advantage had been in large measure their occupation under the monarchy, and intrigue to regain their privileges was their natural recourse when the revolution came.

These powerful forces, the nobles and their dependents and the clergy, were to be overcome within the state before the fruits of the revolution could be made secure. Without the state dangers threatened on every hand. The spirit of the revolution was opposed to the spirit of class and church privilege, which prevailed everywhere in Europe. All the ruling forces of all the neighboring states were vitally interested in maintaining the abuses of power which the revolution had overthrown. The claim of the right of the people to rule

was destructive, not only of monarchical authority but of all that vast, false and vicious system of lay and ecclesiastical aristocracy, which for so many ages cursed and oppressed the multitude. The leaders of the revolution soon perceived that all these forces were to be reckoned with. Distrust, often well founded, caused the patriots to closely watch the old aristocracy. The Jacobin Club became the most potent organization of the enemies of privilege. Its headquarters were in Paris, where most of the leaders of the Assembly were members; it established branches in every part of the kingdom, with which it kept up an active correspondence.

The Assembly reorganized the clerical establishment and required the clergy to take the civic oath. The Pope interposed his authority and by his letter suspended from their functions those priests who having already taken the oath did not retract it within forty days. Refractory bishops and priests sought to arouse their flocks to oppose the authority of the Assembly. The Assembly had usurped functions long regarded as belonging exclusively to church authority. Louis had his Easter services in 1790 performed by a refractory priest. This was denounced as treason. On the night of June 20, 1791, the King and Queen fled from the Tuileries through an unguarded gate, leaving a proclamation protesting against all the acts to which he had assented during his captivity. Great was the commotion at Paris. At Varennes the fugitive King and Queen were arrested on the night of the twenty-first and the next day they were taken back to Paris. General Bouille, who had undertaken to guard the King's flight, found himself unable to do so. The whole country rose against him, and many of the troops sided with the Assembly, which had ordered that the King be brought back. By order of the Assembly the King and Queen remained at the Tuileries under guard. The King expressed himself as satisfied that the people of France supported the Assembly. On July 17 there was a most unfortunate tumult at the Champ de Mars, the scene of the festivities of a year before, during which the national guard fired on the multitude and killed many. On Sept. 3, 1791, the Assembly, having completed the revision of its work,

bore the constitution to the King for his approval. He sent his acceptance ten days afterward, and on Sept. 14 he went to the Assembly and there swore to be faithful to the nation and to the law. On the thirtieth he attended its closing session, and the great National Constituent Assembly ended its labors. Of it La Fayette said, "The Assembly dissolved voluntarily, without any of its members having won either fortune or place, or titles, or power; and we confidently affirm that never was an association of men led by a truer devotion to all pertaining to the liberty and consequently to the real honor of a nation."

The elections for the new Assembly had taken place in September. It opened October 1, 1791 with seven hundred and thirty members, including many young men twenty-five to thirty years old. On the seventh the king attended and made a short address, favorable to the principles of the constitution. Many of the nobility had fled from France and gathered upon the German frontier, where they constantly plotted and solicited foreign aid to overthrow the constitution. Decrees were issued recalling them, and complaints were made against the governments which sheltered them. On April 20, 1792, the Assembly declared war against the King of Hungary and Bohemia. The approach of foreign enemies and the dread of internal conspiracies kept the nation and the capital in a ferment. The undisciplined army at first met with reverses, which ardent revolutionists were disposed to charge to treason. The radicals clamored for the deposition of the King. On Aug. 10, 1792, the mob invaded the Tuileries, from which the King and Queen took refuge in the Assembly. The Swiss guard, having fired into the throng, were massacred. The Assembly overawed by the mob passed a decree, "That the French people is invited to form a National Convention. The chief of the executive power is suspended from its functions until the National Convention has spoken. Every public functionary and every soldier, who in these days of alarm shall abandon his post, is declared a traitor to the country." The right of suffrage was extended to all citizens over twenty-five living from the proceeds of their labor. On the next day the

primary elections were fixed for August 26 and the meeting of the convention for September 20.

The power that had directed the attack on the Tuileries and that now rose into unenviable prominence was the representative of the sections of Paris. At a new election their number was raised to 288, who assumed the general powers of the Paris Commune. Never was there such a lamentable exhibition of the evil effects of mutual distrust and threats of vengeance as at this time. Ardent republicans clamored for the execution of the political prisoners. Royalists in bravado threatened death to the revolutionists when the power of the king should be restored. The air was filled with talk of blood and the passions of the most brutal became thoroughly aroused, while even the more humane lived in an atmosphere filled with the contagion of violence and malice. The Paris Commune appointed a Committee of Surveillance, composed of violent, bad men, including Marat the Madman. On September 2 twenty priests, who refused to take the oath, were, while being transferred to the Abbaye prison, nearly all massacred by their guards. Then followed the slaughter of other prisoners under the direction of this Committee, backed by a bloodthirsty mob. No public authority interfered. All seemed paralyzed. The general public conscience, which had been warped by the intemperate language of extremists, did not awaken to the enormity of the crimes which were being committed till it was too late. The slaughter went on through the second and third and did not cease till the sixth, during which time more than 1,300 victims suffered death. Only about one-third of these were political offenders. The rest were prisoners charged with crime.

By the seventeenth the Assembly began to reassert its authority. It ordered new elections for members of the Convention in Paris, where Marat and other leaders of the massacre had been chosen through intimidation of the better elements, prohibited all night searches, authorized all persons to resist violation of their domicils by force, and required the mayor's signature to all orders of arrest. It further decreed that in any town where the legislative body was in session,



whoever sounded the tocsin or fired the alarm gun without order should be put to death. On September 21 the Assembly passed out of existence and the National Convention took its place.

The first important act of the Convention, passed by acclamation on that day was, "The National Convention decrees the abolition of royalty in France." It was further decreed that all public enactments should date from September 22 as the first day of the year 1 of the Republic. On the borders the armies of France were gaining victories, not so much by force of numbers as of ideas. The liberty held out to people everywhere was gladly accepted in Belgium, Savoy, Nice and along the Rhine, and the spirit animating the army gave it a new force to which the soldiers of kings were unaccustomed. On December 15 the Convention decreed that in territory occupied by the armies of France the generals should proclaim the abolition of existing imposts, titles, feudal claims, chattel or personal servitude, and exclusive rights of the chase, and all privileges, and "proclaim the sovereignty of the people and the abolition of all existing authorities; they shall convoke the people into primary assemblies to organize a provisional administration."

The trial of the King on the charge of treason by the Convention had been in progress, and on January 15 and 16 a vote was taken on three questions. On that of guilt 683 out of the 721 members voted in the affirmative. On the question of submitting the decision to ratification by the people there were 424 votes against to 283 for. On the penalty 387 voted for death against 334. On the twenty-first he was executed. Following a levy of 300,000 men to meet the enemies of France, there was a bloody revolt on the lower Loire in La Vendee. Dumouriez, who commanded the army in Belgium, turned traitor and sought to deliver the army to the enemy. England, in which there had been some sympathy with the revolution, was shocked by the execution of the king, and its interests were attacked by the course pursued in the Lowlands. It began preparations for war. Distrust grew among the republican factions. On March 9 the Convention established

the revolutionary tribunal to pass sentence on conspirators and counter revolutionists. On April 6 a committee of safety composed of nine members, to deliberate in secret, was established, to take the place of a prior committee of twenty. This, the Committee of Public Welfare, became the executive head of the nation, with Danton and Cambon as its leading members. It was to be changed every month. On May 18 a committee of twelve was appointed by the Convention to inquire into the conduct of the Commune. This met with violent opposition from the radicals of the city, and the commission was soon abolished. The radicals were not appeased and on June 2 the Parisian mob, under the lead of Marat, invaded the convention and by intimidation forced it to vote the arrest of thirty-one of its most patriotic members, who opposed the violent measures of the Eveche and the Jacobins. Nothing can better show the prevalence of a genuine spirit of progress than the fact that, amid all the turmoil and violence with which they were surrounded, the Convention on the third and fourth of June appointed special committees to prepare the civil code, to offer rewards to authors of good elementary school books, and to regulate the division of the public property. On June 23 a new constitution was adopted, which contained among others a provision, that laws should be submitted to a vote of the people in case within forty days after passage by the Assembly one-tenth of the primary Assembly in half the departments plus one objected to the law, otherwise the law would stand. This constitution never became operative. Counter revolutions within the state at Lyons, in La Vendee and at other places and war with foreign powers called for the utmost vigor. On August 23 the Convention decreed a levy for active service of all unmarried citizens and childless widowers from eighteen to twenty-five years of age, and called on all citizens en masse to aid in their organization and equipment. On August 15 Cambon presented a plan, which the Convention adopted, for the consolidation and recording in "The Great Book" the items of the public debt, to bear five per cent interest. Under the monarchy all had been confusion. This became the foundation of an orderly sys-

tem of public finance. On June 26 Lakanal presented a scheme for the primary education of both sexes, and on October 26 a decree for the establishment of schools on this plan was passed, but war internal and external and lack of means rendered it impracticable to carry the decree into effect. On August 1 the Convention adopted the metric system of measurements and weights. The Convention also in this time of strife within and without proceeded with the great work started by the Constituent Assembly of collecting into a single code the civil law of France. A committee of five was appointed and allowed three months to make its report. It brought in its draft at the end of the first month, and discussion on it went on at sixty sessions. Here the substance of that great work, which bears the name of Napoleon, was given form. Its materials were taken from the ancient Roman civil law, and from the products of the labors of the Constituent Assembly and moulded to meet the views of the Convention. Influenced by the counter revolution at Lyons, Marseilles and elsewhere, and greatly exasperated by the treason at Toulon, by which it was surrendered with all its naval and military stores to the English, Paris was again in a violent ferment. A vote carried for the division of the revolutionary tribunal into four sections, in order to expedite its work, and the terrible motto "Let the reign of Terror be the order of the day," was seconded by a decree for an armed force to restrain counter revolutionists and protect supplies. On September 17 a law for the arrest of suspected persons was passed, which left the utmost latitude to the revolutionary committee entrusted with its execution. The only condition imposed was, that the names of persons arrested should be sent to the Committee of Public Safety. The killing of Marat by Charlotte Corday tended to inflame the radicals. On October 14 Marie Antoinette was condemned and executed. Then came the trial of the Girondist members of the Convention, whose arrest had been ordered on the third. Twenty-one of them, really innocent of any crime, but courageous men, who opposed the wild excesses of the rabble, were condemned and executed. This however was not the light in

which the matter was then viewed. The Girondists' uprisings throughout France were charged against them, and they were sacrificed. There was little attention to forms of procedure or evidence of guilt by the revolutionary tribunals, which now extended their work over France. Vigorous military operations were carried on against counter revolutionists, and before the end of 1793 La Vendee, Lyons and Marseilles were overpowered and Toulon was recovered from the English. The bloody tribunal followed, wreaking vengeance on those singled out for punishment. Trials were summary and execution quickly followed condemnation. Madame Roland, a most brilliant and pure minded leader of the revolution, with many others of the best people of France, fell a victim to the fury of this bloody tribunal. Yet, while all this terrible work was going on within, France was triumphing over her enemies without, and along the eastern border the enemies were driven back. Though the reign of terror went on, after the end of the year 1793 the baneful power of the Paris Commune was checked by requiring the committees of the sections to report directly to the Committee of General Safety. The Committee of Public Welfare was placed above the ministers and vested with the general direction of the government. This divided into three groups of three each, exercising distinct functions, and being composed of men of great energy gave to the administration needed vigor, though it failed to protect the innocent. The year 1793 also brought to view the man who was to deluge Europe with blood and be the central figure in its history for many years to come, Napoleon. On June 10, 1794, in order to expedite the work of executing prisoners, on motion of Robespierre it was provided that witnesses against the accused should not be required, if other means of proof existed. The pace of condemnation was greatly accelerated. In a little over a year prior to that time 1256 persons had been condemned. In six weeks thereafter 1361 suffered. Nowhere else has bloody retribution overtaken those guilty of bloody deeds with such promptness and certainty as during the Reign of Terror. On July 28, 1794, Robespierre, Saint Just and Couthon, who three days before had felt so secure in

the control of affairs as to call the other members of the committee to account, were condemned and executed with nineteen others, most of whom had taken part in their bloody work. The next day the seventy members of the general council of the Commune of Paris, many of whom were guilty of no offense, were guillotined en masse. The commune had clamored for blood, and its leaders and the Paris mob had often menaced the convention and its predecessors, the Constituent Assembly and the Legislative Assembly! Following the custom of the times there was in this instance no discrimination between innocent and guilty. After the suppression of the revolt in La Vendee there had been great slaughter by order of the revolutionary tribunal. Courier and others, who had directed it, were brought to trial and he and others executed. Some were acquitted.

On Dec. 28, 1794, the Convention changed the mode of procedure before the revolutionary tribunal so as to protect the rights of the accused and promote justice. The Jacobin club, which had done so much to promote the revolution and also the reign of terror, had been closed by order of the Convention a few days before. The tremendous energy of the revolution was not manifested merely in bloody strife, but in an intellectual and physical activity never before exhibited. Deprived of its supplies of steel and saltpetre from foreign ports by war, new processes were invented, steel was made and the cellars of Paris were made to yield saltpetre for powder. A system of signals was devised by which communication was had almost instantly from one part of France to another. A central school of Public Works was established, which afterwards became known as the Polytechnic School, and a Normal School to teach teachers, together with other institutes for special education. On Dec. 26, 1794, a commission of twenty-one was appointed to examine into the conduct of ex-members of the Committees of Public Works and General Safety. On March 2, 1795, this committee reported an indictment against Billaud, Callot, Barere and Vadier, who constituted the ultra revolutionary faction of the committee. Their arrest was ordered by the Convention, and soon thereafter the excluded

Girondists were recalled to seats in the Convention. Seventy-three representatives, held on suspicion, were restored to office, and on March 8, twenty-two Girondists, who had been outlawed, were recalled. But the days of blood and arbitrary punishments were not over. Distrust still lurked everywhere. Billaud, Callot, Barere and Vadier, were ordered by the committee to be transported at once without trial. Fouquier-Tinville the prosecutor who had prosecuted to their deaths so many illustrious men and women, Hermann the president of the court, and the judges and jurors who had condemned them, were themselves brought to trial, but not in that summary manner to which they had resorted. Forty days were consumed in the trial. Fouquier-Tinville, Hermann and fourteen others were condemned to death and guillotined on May 7, 1795. In the southeast, at Lyons, Marseilles, Toulon and elsewhere the reaction took a more violent form, and there was much slaughtering of those who were charged with participation in the reign of terror. After this there were bread riots, due mainly to the scarcity of provisions, and some summary executions, but the general sentiment was opposed to further bloodshed. A decree was passed abolishing the death penalty except as to the emigrants and for forgers of assignats, but civil commotion was not yet at an end. On May 16 a treaty of alliance was entered into with the States of Holland, and Belgium was annexed to France. On April 5 peace was made with Prussia and on July 22, with Spain. Liberal principles had fought the battles of France as well as her armies and, despite internal troubles, France had come out of the struggle with the allied monarchs greatly increased in territory and power. England and Austria alone remained in active hostility, and but for the treason of Pichegru the Austrian army might have been crushed.

On August 22 a new constitution was adopted by the Convention, subject to the peoples' approval. Frenchmen above the age of twenty-one, who paid a direct tax, or who had fought for the Republic through one campaign or would give three days' labor to the government, were made citizens. It contained a declaration not only of the rights but the moral

duties of man. Primary meetings were to choose one elector for every two hundred citizens. Electoral assemblies then elected the legislative body, tribunals and officers of the departments. The Legislature was divided into the Council of five hundred, who initiated all laws, and council of two hundred and fifty Ancients forty years old and upwards, who might veto proposed laws; one-third to be elected each year, and taken from each department in ratio of population. The executive power was placed in a Directory of five members, chosen by the Councils, one to be elected each year, under whom should be responsible ministers. Freedom of the press, of commerce and industry and the inviolability of the home were declared. All Frenchmen who had abandoned their country were forbidden to return, and their goods confiscated. It was estimated that more than 30,000 royalists had left France. Religious toleration was decreed, and no one was to be compelled to contribute to religious worship, nor was any payment to be made therefor by the government. On Sept. 23, 1795, this constitution was ratified by a majority of 50,000. At the riots of Oct. 5, 1795, largely the work of royalists and reactionists, Napoleon came to the front as a leader of the forces of the Convention and dispersed the mob. On Oct. 26, 1795, the Convention, which had for a little more than three years steered the ship of state amid mutiny through stormy seas, passed out of existence, and the new Legislature came into power.

The new directory chosen by the Legislature was La Reveillere-Lepeaux, Carnot, Rewbell, Barras and Letourneur. The issuing of assignats had gone on till they were almost worthless. A new issue of three billions produced only twenty millions. Resort was had to the payment of taxes in kind, and in this manner wheat was obtained for the relief of Paris. Forty-five billions of assignats were issued, and besides the genuine the country was flooded with counterfeits. The falling values of assignats, given forced currency, and the instability of all values gave great opportunities to the speculators, resulting as usual in corresponding suffering among the poor. A striking illustration of the reduced pace at which state trials

went forward was in that of Babeuf, who had instigated an uprising and advocated community of property, which began February 20, 1797, lasted three months and resulted in his sentence to death with one other person. Seven others were sentenced to transportation and the rest acquitted. The reign of terror had passed away, in 1796 the civil war in the Vendee came to an end, and Bonaparte led the army in Italy. Much blood had been shed by order of the revolutionary convention, but the numbers who had suffered were altogether insignificant as compared with those who fell in the bloody wars waged by Napoleon. Members of the Convention gave up their lives as sacrifices to the good of France, but for each one of these many thousands fell in battle. The civilized world has never ceased to condemn the excesses of the revolution, but it still applauds the wholly indefensible butcheries of war. Much of the bloody work of the reign of terror resulted from too intense devotion to the cause of liberty. Distrust followed the overthrow of the monarchy, which had ripened and rotted through so many centuries. If moderation of language could have been maintained, much crime would have been avoided. Intemperate demands for the blood of opponents and counter threats caused blood to flow when popular tumults occurred. Never was there a time when intemperate words led to bloody deeds so quickly and frequently. But the heroic work of those who braved death at the guillotine gave an impulse to governmental reform which can hardly be measured. The peculiar sadness of these executions is augmented by the nobility of soul displayed by so many of the victims. The Girondists and Madame Roland gained a pure fame, which will grow in lustre as true liberty spreads its light over the world. Even Danton, Robespierre and Saint Just were sincere republicans. The great lesson of the reign of terror is, that in times of great excitement intemperate language is as dangerous as sparks in a powder house, and that those who unjustly take the lives of others may expect that retributive justice will soon return upon their necks the unmerited strokes which have destroyed others. Compared with blood spilled in the many causeless wars waged by the kings to gratify their mere personal pride



or ambition, all the blood spilled by the revolutionary tribunals was as a drop in a great tub full. But the blood of the revolution was to water a plant of incalculable value to mankind, while that spilled at the command of the kings was not only to no good purpose, but passed a legacy of oppression and hatred down from generation to generation. Europe and America claim to believe and follow the teachings of Christ, yet the savage Mars, the war God of ancient Greece and Rome, still holds sway. Kings and states still send their men forth to do wholesale murder to gratify the pride and ambition of kings and rulers, and when great battles are fought and many thousands meet death, and many more thousands live in the agony of mutilation, the multitude applauds and the fierce leaders become worshipped as heroes. France achieved her true and great glory through her three great assemblies and during the time of her bloody travail. Napoleon led her back into the old train of Mars and watered the fields of Europe with innocent blood. For this rulers of England and Austria especially must share the blame, and of Prussia, Spain and Russia also a part. Napoleon sought, not liberty or the happiness of the people of France, but that false phantom, glory, which leads so many to the grave over a path smoking with pestilential fumes of war and reeking with the corruption and miseries it engenders. Europe has neither accepted the rich fruits of the deliberations of the patriots of that memorable period, nor ceased to worship Mars, Woden and Thor. These are still the gods of the palaces and many of the homes of the most advanced nations of Europe, in fact though not in name. The time of intense activity of the pure republican sentiment ended with the Convention. The new legislative chambers were largely reactionary. With the exception of Carnot, that most able and worthy patriot, the Directory was made up of poor or bad material. Napoleon was already plotting to gain arbitrary power, though professing the most profound devotion to republican principles. He sent his emissaries to Paris to further his ends. The army was rapidly becoming the ruling force of the state. The clubs, which had wielded such vast influence, had lost

their hold on the people, and the most powerful ones had been closed and dispersed. The treason of Pichegru, which had come to light, was made a pretext by Barras, La Reveillere and Rewbell for a *coup d'etat*. On Aug. 18, 1797, the Directory addressed a message to the Five Hundred, calling attention to plots and violations of the constitution. It was referred to a special committee to direct prosecutions against all plotters against the constitution and soldiers holding political councils. On the night of September 3 the Tuileries was surrounded by 12,000 soldiers with forty cannon. The assembly was prevented from holding a session the next day, and Barthelemi, one of the Directory opposed to the *coup*, was arrested, while Carnot escaped and fled to Switzerland. Thirty members of the Council of Ancients attempted to hold a session at the house of their president and were arrested and imprisoned in the Temple. Eighty-five of the Five Hundred, holding a session near by, were dispersed and many of them arrested. A session of those members of the councils favorable to the three Directors, the Triumvirs, was then held. A resolution in thirty-nine articles was voted, annulling the elections in fifty-one departments as being falsified by royalist emissaries, thus destroying the opposing majority. The political rights which had been restored to the relations of emigrants were taken from them. Forty-two members of the Five Hundred and eleven of the Ancients were ordered to be transported with Carnot, Barthelemi and other prominent men, including Pichegru. The law recalling transported priests was repealed and all newspapers were placed under police inspection. The law against clubs was repealed, though they were forbidden to attack the constitution. These resolutions were first passed by the Five Hundred and then by the Ancients on September 6. The directory was filled by adding Merlin and François. On October 17 Napoleon concluded a treaty of peace with Austria, contrary to the instructions of the Directory, but which they ratified. This left England as the only country with which war still continued. The Directory made Napoleon commander-in-chief of the army of England, and he came to Paris, where he

affected modesty and was accorded great distinction. His next project was the invasion of Egypt.

When the elections of 1798 were held, the Directory again interposed to maintain their ascendancy in the Councils and annulled such of the elections as they deemed most unfavorable. Treilhord succeeded François on the Directory. While Napoleon was prosecuting his war in Egypt, public sentiment in France grew hostile to the Directory, and the elections of 1799 were carried by the reactionists. Sieyes succeeded Rewbell in the Directory. The newly elected one-third of the Councils infused life and independence into them. Liberty of the press and of assemblage and free elections were ordered. Conscriptions were ordered and a forced loan of one hundred millions from the well-to-do classes. War was renewed and went on in Italy, Switzerland and the low countries against the forces of Austria, England and Russia, as well as in Egypt, with varying success. Napoleon left his army in Egypt and arrived in Paris Oct. 25, 1799, where he at once commenced to plot to overthrow the Directory and assume dictatorial power, backed by his military followers. The pretext of a Jacobin plot was invented. A decree of the Council of Ancients removing the session to St. Cloud was obtained, and Bonaparte was commissioned to command the military forces and execute the decree. The Council of Five Hundred met four hours later and were disinclined to go to St. Cloud, but Lucien Bonaparte, the president, ruled that the matter could not be discussed till next day. Three of the Directory resigned. Gohier and Moulin, the remaining directors, who remained steadfast in support of the constitution, were kept confined in the directoral residence in Luxembourg by troops under Moreau, who followed Napoleon. The leaders of the Councils met at night with Napoleon and Sieyes, when Napoleon declared that the constitution must be changed and a temporary dictatorship established. There was also a meeting of representatives opposed to his schemes to devise means of resistance. Nov. 10, 1799, the two councils met at St. Cloud. A letter from the secretary general of the Directory was read announcing the resignation of four directors,

though neither Gohier or Moulins had resigned. Napoleon appeared in the Council of the Ancients and made a speech, in which he talked of liberty and equality, while he demanded the dictatorship. He then went to the Five Hundred and entered, escorted by some of the legislative guard. Being met by protests at the appearance of swords and bayonets in the Council, he was taken from the hall by General Lefevre and the soldiers. Then Lucien Bonaparte went out and addressed the troops as president of the Council in the interest of his brother, after which Murat led in the genadiers, who drove the representatives from the hall. At nine that night Lucien assembled thirty of the members of the Five Hundred, who assumed to be a quorum and approved the course taken by Napoleon and the troops. Three consuls were nominated, Napoleon, Sieyes and Roger-Ducos. All swore to support the republic. Two commissions to assist the consuls in changing the constitution were chosen, and the exclusion of fifty-seven of the representatives and an adjournment of the Councils for three months was ordered. This order was ratified by the Ancients. The new consuls professed devotion to the republic and to liberty. Napoleon was popularly looked on as a Washington, but at best he was one of the coldest of military despots. The adoration of the multitude was mainly based on the ancient worship of the war god, as whose representative Napoleon was acknowledged and glorified. The decree which formed the provisional consulate invested them with full power and charged them to restore order and peace. Two commissions of twenty-five members each took the place of the Councils, and their powers were to continue three Months till the Councils should meet again. Napoleon's great strength lay in his judgment of the capacities of men and in his ability to have them carry out his will. He at once selected as his principal ministers three men of great executive ability. Talleyrand for foreign affairs, Berthier for war and Gaudin for finance. Many political prisoners were released, but the sale of the goods of the emigrants was confirmed. On November 16 a harsh measure was adopted, by which thirty-seven citizens were arbitrarily transported and twenty imprisoned on

the Isle de Ri. Some were guilty of bloody crimes, but others only of having opposed Napoleon's usurpation of power. On Dec. 15, 1799, the new constitution, mainly the work of Sieyes, was made public. It placed the executive power in three consuls, to hold for ten years, and eligible to reelection. Of these the first alone could promulgate laws, appoint ministers, ambassadors, and officers generally. The second and third consuls could consult with, but not control the action of, the first. 500,000 electors chosen by universal suffrage elected 50,000 persons, who in turn chose 5,000 names from which a senate made up of eighty life members chose the consuls, tribunes and legislature. The legislative body was composed of three hundred members. A council of state was charged with drafting laws, its members to be named by the first consul. The laws thus formed were to be presented to a tribunate of one hundred members, which after discussion was to pass them on in the hands of three orators, who should discuss them against three councillors of state, nominated by the consuls, in the presence of the legislature, which should then adopt or reject the proposed laws by secret ballot without debate. Vacancies in the senate were filled by the senate from a list of three candidates for each vacancy furnished one each by the legislature, the tribunate and first consul. The senate had power to veto any law or governmental act it deemed unconstitutional. Municipal officers were to be taken from the first list of 500,000 electors, departmental from the second of 50,000 and national from the third. There was no declaration of the rights of man and no guaranty of liberty of the press. Personal liberty only was assured. The new constitution was adopted by a large, almost unanimous, vote. Napoleon, Cambaceres and Lebrun were chosen consuls. The legislative session of the new government was opened Jan. 3, 1800. A law was passed abolishing the cantonal municipalities and substituting larger units called *arrondissements*. Officers were appointed by the government instead of chosen by the people. Over the departments prefects were appointed and subprefects over the *arrondissements*, and the commune had a mayor named by the prefect. Corresponding changes were made in

the judicial system, and jurors were named by the prefects. All judicial officers except justices of the peace were appointed. Under this system France was again ruled by one head. On Feb. 9, 1801, peace was made with Austria. July 16, 1801 a concordat with the Pope reestablished the Catholic as the religion of state in France, and on March 25, 1802, a treaty of peace was concluded with England. The emigrants, of whom there were said to have been 145,000, were allowed to return and restored to such of their property as had not been sold. The educational scheme of the Convention was replaced by another, which failed to give general primary education, but did provide military schools. By vote of the people Napoleon's term of office was extended for the term of his life. La Fayette, who after long confinement in Austrian prisons had finally returned to France, voted no, but very few others had the courage to do so. There was a brief period of peace and prosperity, which unfortunately soon came to an end through the fault of bad rulers in France and England. In 1803 that long and fearful war commenced, which was to cause such frightful sufferings and loss of life. The year 1804 witnessed the completion of the Code, which bears the name of Napoleon, and for which he claimed the credit, but it was of course mainly the work of lawyers, and most of the material for it had been prepared by the Convention. (A summary of the provisions of this Code with its modifications contained in the Civil Code of France will be found in the Appendix.) This great work became a model followed by neighboring states in the codification of their laws, and presents systematically arranged and concisely stated the civil law of France. On May 18, 1804, Napoleon, having obtained the sanction of the Senate, was proclaimed Emperor with succession in his heirs, a civil list of 25,000,000 and the use of the royal palaces and estates. With the advent of Napoleon to power the internal struggles of parties, clubs and factions soon came to an end. He introduced order and system and carried on useful public works. In the collection of the revenue there was thoroughness and in its expenditure economy. Restored order and prosperity were placed to his credit and gladly accepted. But

this gain was at the expense of a military despotism, in which the blood and treasure, the peace and happiness of a great nation weighed as nothing against the ambition and the criminal folly of a single heartless despot. Thenceforth the young men of France were called from their homes to be sacrificed to the fierce war god, whose high priest was Napoleon. Despotism in France and despotism in England, Austria, Prussia, Spain and Russia must be charged with the lives of the millions who were slain in the long struggle, which deluged Europe with blood till Napoleon's fall at Waterloo.

With these long and fearful wars and the bloody battles which gave Napoleon such renown as a military commander we have nothing to do, save to call attention to the frightful suffering they caused and the needlessness of them all. Never was there a more wanton crime committed against a people who had confided their destinies to a ruler than that of Napoleon in leading a French army into Russia in 1812 to perish without a cause. The hundreds of thousands of lives, sacrificed in battle or to the rigors of a severe northern winter, were offerings to the war god and chargeable to Napoleon. From this time on disasters multiplied, and by the winter of 1814 France was literally drained of young men capable of military service, and the vast accumulation of arms and military stores, which had been provided with so much care, was in the hands of the enemy in Italy and Germany. Never in all the history of France was there a stronger illustration of the folly of entrusting the power to make war to a single man. Never did a despot live who cared less for human life or human happiness than Napoleon. His mad desire for military glory and conquest dominated every act and doomed to an untimely death most of a generation of brave men. So long as the young are taught to admire and emulate the conduct of such human monsters, and to look on war as the avenue through which fame and glory must be sought, so long will humanity suffer the horrors and miseries of needless wars. When murdering by wholesale shall be viewed in its true light, as private murder now is, and when the duels of nations shall be weighed as private duels are, the world may breathe a

purser air and the worship of Mars give way to the spirit of genuine Christianity.

Exhausted France could oppose no effectual resistance to the allied powers, who, profiting by the lesson so often taught by Napoleon that time is of prime importance in military movements, pushed steadily forward without allowing time to Napoleon to concentrate the scattered remnants of his forces or to organize and equip the few new recruits France yet could furnish. On March 31, 1814, the allies entered Paris. They demanded the overthrow of Napoleon. On April 2nd the remnant of the Senate decreed the deposition of Napoleon and his family; on the next day the legislative body confirmed the decree, and on the 6th Napoleon abdicated. The allies allowed him to retain the title of Emperor with the island of Elba as his empire, and his wife Marie Louise of Austria was given the duchy of Parma. Ample pensions were allowed to him and the members of his family. A new constitution was formed, afterward modified, and Louis XVIII was made king. The executive power and the initiative of all laws was conferred on the king. The peerage was restored, a house of lords taking the place of the Senate, with unlimited power of appointment in the king. The legislative power was confided to the King, Senate and Chamber of Deputies. The Constitution sanctioned individual liberty, freedom of worship and of the press, confirmed the sale of national property, the public debt, and accorded amnesty for acts committed during the revolution. The senate was to be composed of not less than one hundred and fifty nor more than two hundred members, chosen by the King, but one hundred of the senators then in office were to be continued. The Catholic was retained as the religion of state. The right of suffrage was greatly restricted. Electors were required to be thirty years old and pay an indirect tax of three hundred francs. Deputies were to be elected for five years and one-fifth renewed each year. The right to make war and peace was vested in the king, with that of making all arrangements necessary for the execution of the laws and the safety of the state. A responsible ministry was established. Conscriptions were to be regulated by



law. The Constitution was dated from the nineteenth year of the reign of Louis XVIII, as if the republic and empire had never existed, and was called the Constitutional Charter, as if granted by grace of the king. The Charter was proclaimed June 4, and eighty-three senators and forty dukes from the nobility of the old régime were made members of the new house of peers. The rule of the Bourbons, which again placed in authority those who had so long been the enemies of France, though at first accepted with hope, because of the intense longing of the people for peace and security, soon produced irritation everywhere. The King and his followers were wanting both in moral purposes and in business capacity. The treaty of Paris, which diminished the territory of France, was a source of national humiliation. Discontent grew, and Napoleon, learning the situation, set sail on Feb. 26, 1815, with about 1,100 soldiers and landed near Cannes on March 1. He was received everywhere with enthusiasm, the soldiers sent to oppose him deserting the Bourbons and joining his little army. On March 19 he reached Fontainebleau, and the Bourbons fled. On the 20th he entered Paris and took possession of the Tuileries. Again the Constitution was changed, Napoleon seeking the aid of the republican sentiment. It was in main the Charter of Louis XVIII, the principal change being in the lower house, which was called House of Representatives, and in the mode of election. Primary meetings were to nominate for universal suffrage 100,000 electors for life, forming two classes, one of the departments and the other of the districts, each of which were to elect representatives at least thirty years of age. The peerage was declared hereditary. This constitution, called the supplementary act, was ratified by the people. The two chambers met on June 3 and Napoleon set out on June 20 to be defeated at Waterloo. The representatives of the people again had to face the situation of submission to foreign powers. In the Chamber of Representatives Lucien Bonaparte strove to maintain Napoleon in power. To his appeal La Fayette answered: "Prince, you slander the nation. It is not for forsaking Napoleon that history will blame France, but for following him so long.

She followed him in the Egyptian sands and the Russian deserts, on fifty fields of battle, in reverses as in his triumphs. Fidelity too long continued has cost France three million men!" The net result of all this enormous sacrifice was, that exhausted France lay at the mercy of its many foes, some or all of whom might have been friends if Napoleon had striven for peace with half the zeal he prosecuted war. Napoleon again abdicated, proclaiming his son emperor. On July 4 the representatives signed the capitulation, turning the destinies of France over to the allies, but on the same day a declaration of rights was presented to the House which was adopted on the next. On July 7 Prussians and English took possession of Paris and Louis XVIII entered it the next day. The inundation of foreign soldiers, who pillaged and preyed on France, was overwhelming, amounting to as high as 1,240,000 men. The French army was disbanded and disorder, pillaging, murder and excesses of all sorts prevailed over the country. On July 15 Napoleon surrendered to the English and went to Plymouth, expecting to be allowed to live in retirement, but he was sent Aug. 8 to St. Helena as a captive. The elections in 1815 were carried by the royalists, and a law was passed creating special courts for the trial of political offenders. The peerage was reconstructed by the addition of one hundred and ninety-four peers, declared hereditary. Louis reigned as a constitutional monarch in comparative peace. In 1819 the electoral laws were revised so as to require the election of all the deputies once in seven years, instead of a portion each year, and increasing the number. The policy of a protective tariff on foreign goods was adopted, and with peace and industry France advanced in prosperity. The many-sided civilization, contributed to by the millions of people, moved forward. Political parties developed, but there were no great outbreaks causing bloodshed. Louis XVIII passed away on Sept. 16, 1824, and Charles X took his place. The rule of Louis XVIII was not that of a Bourbon despot, but of a constitutional monarch, governed in great measure by the principles developed by the revolution. Charles observed the restrictions on his power imposed by the charter in the main

until 1829, when he named a very obnoxious ministry. On July 25 four ordinances were signed by the king and countersigned by the ministers, the first suspended the freedom of the press, the second dissolved the Chamber of Deputies, the third reduced the number of deputies and altered the electoral law, and the fourth convened the new electoral college on Sept. 6 and 13. When these arbitrary acts became known Paris was again in a ferment. On July 28 the streets were barricaded, the tocsin was sounded and all Paris rose to resist the king's usurpation of authority. There was fighting in the streets between the troops and the citizens, but many of the soldiers were disposed to side with the people. Though 5300 persons were killed or wounded in the fight, there were no exhibitions of such barbarity and bloodthirstiness as in the revolution of 1789. The people realized that the soldiers fought from a sense of duty, and the soldiers really felt in sympathy with the people. On the 29th two regiments went over and joined them. The king was without efficient support and left the city. La Fayette, that grand character, who had taken part in the stormy scenes of the American Revolution and of 1789, again came to the front in command of the national guard of France. The King abdicated and left France on Aug. 3, 1830. On the same day the Legislature convened, two hundred and forty deputies and sixty peers being present. The Constitution was again changed, the Catholic religion ceased to be recognized as the religion of state, censorship of the press was abolished and its inviolability established, commissions and extraordinary courts for the trial of offenders were prohibited, the tricolored standard was resumed, the age of deputies was fixed at thirty to serve five years, hereditary peerage and all peerages created by Charles X were abolished. The throne was declared vacant and the Duke of Orleans was chosen king, on condition of acceptance of the amended Charter. Though there was much republican sentiment, many ardent republicans like La Fayette deemed it wisest to choose a king. Louis Philippe came to the throne as a citizen king. The difference between his case and that of ancient monarchs was expressed by M. Thiers, who took

part in this revolution, in the words, "The king reigns, he does not govern." Louis Philippe was not content however to merely reign, he sought also to govern. On June 5, 1832, there was an outbreak in Paris which assumed considerable proportions and seemed formidable, but on the next day it was suppressed. Many of those implicated were arrested and tried. Some were sentenced and others acquitted, but there were no executions, thus showing a marked advance from the bloody days. Though Louis Philippe was charged with weakness in his foreign policy, he avoided disastrous foreign wars, and France prospered in peace. His reign witnessed the introduction of the railroad and telegraph and marked advance in manufactures and commerce. Though there were many attempts to take the King's life, he always exhibited courage when attacked and clemency toward those implicated. Nothing more surely proves the advancing moral tone of the people than the improved administration of justice. Trials no longer meant mere formal procedure preliminary to bloody executions, but there was a decided leaning toward clemency, and even those guilty of political offenses were sometimes acquitted. The King no longer used the courts as tools for the execution of his arbitrary will. The public were becoming accustomed to submit to law and reject claims to arbitrary power.

On Feb. 24, 1848, as a result of an order prohibiting the holding of a banquet, all Paris rose against Philippe, who in the morning believed himself secure, yet abdicated at noon in favor of his grandson. Barricades were thrown up all over the city. The national guard, when summoned, sided with the people, and the regular troops, though numerous, were not able to contend with the mob. Public sentiment was so strong against the king and his ministers that a revolution was effected with very little bloodshed. A provisional government was formed by naming a new ministry, the Chambers were dissolved and an election ordered to choose a new National Assembly. The ministry were confronted with conditions urgently demanding relief. Great numbers of laborers were unemployed and in want. They looked to the state to afford them relief. On February 25 a workman rushed into

the council chamber with a petition crying for, "the right to labor in an hour." "Such is the will of the people." This was not a very disorderly demand, though difficult to comply with on a large scale under such circumstances. The election for members of the National Assembly was finally fixed for April 23, and nine hundred representatives were to be chosen by departments and to receive twenty-five francs per day. All titles of nobility were abolished. The political discussions preceding the election disclosed a great diversity of ideas and schemes for the betterment of social conditions. The relations of labor and capital and the fundamental questions concerning rights of property were much discussed, and socialists and anarchists advanced their theories. The ministry established banks of discount and public warehouses and resorted again to paper money. Great numbers of laborers were employed on public works, the list including by the end of April nearly 100,000. On April 27, 1848, the government proclaimed the abolition of slavery, including the colony of Algiers. The elections passed off peaceably with a few exceptions, the new National Assembly convened on May 4 and on the 8th approved the conduct of the provisional government. On June 23 rioting commenced in Paris and barricades were erected. No very well defined purpose animated the rioters, but they were led by agitators who opposed the measures of the Assembly, and a great number of needy laboring men followed them. Serious conflicts ensued, continuing through the 24th and 25th, when the rioters were finally overcome by the troops. More than 1500 persons were killed and 2500 wounded in this conflict, which was wholly wanting in good results, and was followed by the arrest, imprisonment and trial of a great number of persons who took part in it. It is encouraging to note that the days of summary and bloody punishments were over, some were transported and some imprisoned after trial, but none were executed. On Nov. 4, 1848, the Assembly completed its work in the adoption of a new Constitution, which was read to the people in the Place de la Concorde on November 12. It provided for a President to be elected for four years by the people and ineligible to re-

election till after four years more. The Assembly of 750 members was to sit in a single body with power to choose a council of state to hold for a term of six years, and to draft all laws. Magistrates were to be named by the executive power, mayors by the town councils, and justices of the peace elected by the people. Among the clauses of the Constitution exhibiting an advanced appreciation of the obligations of the state to its weaker members and to the outer world were the following: "The French Republic respects foreign nationalities . . . it will never employ its powers against the liberty of any people." "The republic should by fraternal assistance insure the support of its needy citizens either by procuring them work to the extent of its means or by giving the means of existence to those who are unable to work and have no family." The duty of the state to furnish education was recognized.

The election was fixed for Dec. 10, 1848, and resulted in the choice of Louis Napoleon Bonaparte as President. On December 20 he took the oath of office, professing devotion to the cause of liberty and the principles of the republic. The Constituent Assembly held its last session on May 27, 1849, and the new Legislative Assembly opened on the next day. Louis Napoleon began his career as President by overturning the little Republic of Rome, which had driven out the Pope, and restoring him to his temporal possessions, in violation of the Constitution. On March 15, 1850, the Assembly passed an educational law which gave to the Catholic clergy the principal supervision of primary schools. The election law was changed so as to require a three years' residence to qualify a voter. This disfranchised a large portion of the laborers. On Dec. 2, 1851, Napoleon, having gathered about himself and placed over the army men on whom he could rely, caused the arrest of sixteen of the most prominent members of the Assembly, without any lawful pretext, and issued a decree and three proclamations. The decree dissolved the Assembly and restored universal suffrage. Paris was declared in a state of siege. One proclamation accused the Assembly of plots and appealed to the people to adopt a new form of constitution,

the leading points of which were: First, A President chosen for ten years; second, Ministers responsible to the President; third, A council of state to prepare laws and discuss them before the legislative body; fourth, A legislative body elected by universal suffrage to discuss and pass laws; fifth, A Senate to guard the Constitution and public liberty. To the army a flattering proclamation was issued, demanding passive obedience to orders and assuming full responsibility to the people for all his measures. The third proclamation was by the prefect of police warning all that attempts at revolt would be severely repressed. The Assembly was forcibly prevented from again convening. Though the Constitution gave the supreme court power to call a grand jury to try the president in case of high treason, no action was taken because of "the material obstacles to the execution of any decree that might be issued." Attempts at resistance to Napoleon's usurpation of power were made at Paris and throughout the provinces, but they were mercilessly crushed. In Paris some barricades were erected, but the people were not able to hold them against the army, and those offering resistance were mercilessly slaughtered. As the resistance was overcome great numbers of arrests were made, and while the guillotine was not again set actively at work, there were many arbitrary orders of transportation and imprisonment without any observance of legal forms. Hostility to the usurper was an offense punished by his emissaries at discretion. The election held on December 20 and 21 resulted in an overwhelming endorsement of the usurpation. On Jan. 14, 1852, Napoleon promulgated a new Constitution. It began with a "recognition, confirmation and guarantee of the principles proclaimed in 1789," but "The government of the French Republic is intrusted to Prince Louis Napoleon Bonaparte for the term of ten years," who was made responsible to the French people. The president was given command of the army and navy, power to declare war, make treaties and alliances, fill offices and make rules and regulations for the execution of the laws. Justice should be executed in his name and he alone could issue, sanction and promulgate laws. All public functionaries must swear allegiance to him. "The

wheel within the wheel of the new organization will be a state council of from forty to fifty members, chosen and revocable by the president of the republic, discussing the laws in private session, then presenting them for the approval of the Legislature." The Legislature was to consist of 262 members, chosen for five years by universal suffrage, to vote on laws and taxes. The Senate was composed of eighty members, liable to be increased to one hundred and fifty, chosen by the president, except that cardinals, marshals and admirals were senators *virtute officii*. The president might give senators an income of 30,000 francs. The senate was to oppose the promulgation of laws contrary to the Constitution, to morality, religion, etc. All mayors were chosen by the executive. There was no guaranty of liberty of the press or security of the person against arbitrary arrest. The new constitution created a despotism based on a written constitution and universal suffrage. The new government closed many of the schools and changed the faculty of the university and the course of study. On the other hand its energies were devoted to the development of industrial enterprises and commerce. Railroad companies were organized and roads constructed. Banking institutions were organized and the Bank of France grew in importance. November 20 and 21 the people restored the Empire with Napoleon as hereditary ruler under the title of Napoleon III by a nearly unanimous vote. March 27, 1854, the war with Russia broke out with the somewhat novel combination of Turkey, France and England as allies against Russia, while Austria armed but remained neutral. This strange combination prosecuted a war which cost France the lives of 95,000 men, besides those who lingered on, suffering from the effects of wounds, exposure and disease, and from which France gained nothing.

On May 3, 1859, the emperor announced to the Chambers that Austrian troops had invaded Piedmont and proclaimed that Austria must rule to the Alps or Italy be free to the Adriatic. A brief campaign resulted in overwhelming defeats for the Austrians, followed by a peace quickly concluded by Napoleon, by which Piedmont gained Lombardy at the



expense of the cession of Nice and Savoy to France. This war, although bloody while it lasted, ended July 8. It gave Napoleon prestige, restored to France a part of its natural territory and imparted an impulse to the idea of Italian nationality and unity, which soon resulted in the union of the whole peninsula under the Sardinian king and the expulsion of the Austrians. Operations in China and Algeria were also productive of the extension of French power, but the attempt to place Maximilian on the throne of Mexico during the civil war in the United States, cost that unhappy prince his life, along with that of many thousand others, and brought disgrace on the empire. Neither of these wars was long or very exhausting to France. On the other hand the peaceful activities of the country were stimulated under the reign of Napoleon as they had never been before. A liberal trade policy, by which many ancient restrictions were abolished and trade with foreign countries encouraged, together with the development of shipping interests and improved means of internal communication by railroads, canals, and wagon roads, resulted in rapid development of manufactures and domestic and foreign commerce. Though the rule of Napoleon III was a despotism, it was a despotism based on the popular will and with energies directed toward the material development of France. In adapting such a government to the tastes and prejudices of the French people Napoleon III manifested great tact, and on the whole his system was not altogether unsuited to the conditions then existing. But the inevitable attendants of despotisms are corruption and injustice. Arbitrary power is never effectually held within the even course of justice merely by a sense of right. The unrestrained power to act on impulse, without external restraint, inevitably results in departure from right conduct. There is also a strong tendency for the official instruments, through whom the despot executes his will, to adopt systems and methods of administration which are essentially and inherently bad in their effects on the general public, but agreeable and profitable to the interested supporter of the throne. Whether a realization of the growth of such conditions influenced him, or other motives,

in 1860 he granted to the Legislature publicity of debate, freedom of speech and some measure of control over the expenditures of public moneys. Legislation for the betterment of the conditions of laboring men was also attempted. While looking to the people through universal suffrage for his support and authority, he really took some interest in the welfare of the great multitude. In 1869 he proposed still more sweeping reforms, by creating a ministry responsible to the Senate as well as to the Emperor, and otherwise materially extending the power of the Legislative Chambers. In accordance with his prior policy his new constitutional measures were submitted to the people and approved by an immense majority on May 8, 1870, 7,300,000 voting for to 1,500,000 against. The particulars of the changes thus effected in the framework of the government were rendered unimportant by following events. The greatly increased power of the Prussian monarchy, elevated to the leadership of Germany after military successes over Austria, caused intense popular jealousy in France. Napoleon, relying on the reports of his ministers as to the condition of the army and its equipments, rashly and rudely provoked war with Germany, without any real ground for a quarrel. War was formally declared on July 19, 1870, but here the weakness of his despotism became evident to Napoleon and to the world. The effects of corruption and inefficiency were apparent in all departments of the military service. Instead of a state of readiness for immediate action, it was found that the army was in no condition to move. Arms, wagons, ammunition and equipments of all kinds were so stored and distributed as to be unavailable for immediate service. On the other side Germany was ready, and by September 2, a month after the opening of the campaign, Napoleon and his army were prisoners of war as the result of the fatal battle of Sedan. On Sunday September 4 the Legislature met, declared the Imperial Government at an end and proclaimed the Republic. A provisional government with General Trochu as President was formed. Though this government struggled desperately to rally the forces of France and resist the invading host, no sufficient amount of energy or

effort could be exerted to counterbalance the superior preparations of the Germans. On January 28, after enduring the horrors of a siege with its vast population, Paris surrendered to the invaders. On February 26 peace preliminaries were settled, France ceding Alsace, except Belfort, and part of Lorraine, and agreeing to pay 1,000,000,000 francs as war indemnity. During the first week of February elections were held and a new Assembly of 653 members was chosen, which convened at Bordeaux on the twelfth and on the seventeenth chose M. Thiers President, who named an able ministry. When Paris surrendered the soldiers of the National Guard were allowed to retain their arms. After the terms of peace had been accepted the old turbulence of the Parisian mob again manifested itself, it rose in revolt against the government, and the National Guard joined forces with it. A bloody conflict followed, but this time France dictated to Paris, not Paris to France. For once the government supported by the provinces was able to force the turbulent city to submit, though not without much bloodshed and many barbarities, all too similar to those of the reign of terror.

The government drifted without the adoption of a definite constitution. The Assembly, which had moved from Bordeaux to Versailles, was monarchically inclined, but legitimists, Orleanists and imperialists were not able to combine. In May 1873, the Thiers government sustained a defeat in the Assembly, as a result of which Thiers resigned. Marshal McMahon was elected to succeed him, and at the session which began in November 1873 his powers were prolonged for seven years. The matter of settling the constitution dragged on till Feb. 25, 1875, when the proposition was finally carried by a majority of only one vote, that "the President of the Republic is elected by an absolute majority of votes, by the Senate and Chamber of Deputies united in National Assembly. He is appointed for seven years, and is eligible for reëlection," and also that the power of dissolving the Chamber should be granted to the President of the Republic. A Senate was created consisting of three hundred members, not under forty years of age, one third to be chosen every three years, with

powers equal to those of the Chamber of Deputies except in matters of finance. The Senate was made a court for the trial of the President and ministers in case of impeachment. The Chamber was elected by universal suffrage, and had power to propose amendments to the constitution, which must be adopted by both houses. During McMahon's term no revision was allowed unless proposed by him. The President was the executive with power to appoint civil and military executive officers, nominate the Council of State, dissolve the Chamber of Deputies at any time with the consent of the Senate, and to be responsible only for treason. The ministers were made responsible individually and collectively to the Chambers. Thus the existing republic was established. The assembly ended its existence on March 7, 1876. The elections which ensued resulted in a large Republican majority. On June 25, 1877, owing to a controversy between the President and Chamber of Deputies over the Ministry, the Chamber was dissolved and an election ordered. The result was an increased Republican majority. A ministry still out of harmony with the majority having been named by the President, composed of persons not members of the Chamber, a resolution passed that body to "hold no relations with this Ministry," and the Chamber refused to vote the Budget. The President found it necessary to yield. In January 1879 he came in conflict with the ministry over army appointments, which he allowed to continue longer than the legal limit, and the President resigned. Jules Grevy was thereupon elected by the two Chambers assembled in congress as his successor. Since the establishment of the Republic the energies of government have been directed more than ever before toward the development of an orderly system, based on the will of the people. Under the law of 1885 the representation is on the basis of one representative for each department and an additional one for every 70,000 or fraction thereof of population, and the deputies are chosen by universal suffrage. The Senate consists of three hundred members, one-fourth of whom were at first chosen for life by the Assembly, and each vacancy among these to be filled by the Senate. The remainder are chosen

for nine years by special bodies in each department and in the colonies, a third of the number being renewed every three years. The President receives a salary of 600,000 francs per year and an allowance for expenses of 162,400 francs. Senators and deputies receive 9,000 francs per year. The allowance is not large compared with those to past kings and emperors, who were granted 12,000,000 to Louis Philippe, 32,000,000 to Louis XVIII and his family, and 25,000,000 besides many special revenues to Napoleon III. At the head of the executive department is the president, with a cabinet of nine ministers, namely, of justice and keeper of the seals, foreign affairs, interior, finance, war, marine and colonies,—instruction, ecclesiastical affairs and fine arts,—agriculture and commerce, and public works. These ministers are appointed by the president, but responsible for their acts to the chambers. Aside from the responsible executive and legislative departments of the government there is a Council of State, whose business it is to give advice on projects of law proposed by the executive or the chambers and on administrative regulations and by-laws. It also exercises jurisdiction over administrative officers. All disputes arising in matters of administration and all complaints against administrative officers are cognizable by the Council, whose decision is final. The composition of the Council is a president and vice-president, twenty-two councillors in ordinary service and fifteen extraordinary, twenty-four masters of requests, twenty auditors of the first class and ten of the second, a general secretary and a secretary *du contentieux*. The auditors are appointed after competitive examination, the ordinary councillors by the chamber of deputies and the others by the president. For administrative purposes France is now divided into eighty-seven departments, subdivided into three hundred sixty-two arrondissements, 2,865 cantons and about 30,000 communes. The chief executive officer of each department is a prefect appointed by the president, and of each arrondissement a sub-prefect. A prefect is charged with the maintenance of order, and for that purpose is at the head of the police and may summon the military force; he superintends

the collection of taxes, issues local decrees, appoints and dismisses his agents and is charged with the duty of executing the orders of the government. There is also in each department a general council elected by universal suffrage, and a council of prefecture nominated by the executive. The business of the councils is to assess taxes, manage local property, roads, railways, canals, charitable institutions and other matters of local interest, decide legal questions and advise the prefect when he so requests. They are also designed to place a check on any attempt at usurpation of power, and in case of a *coup d'état* they must immediately assemble and choose members of a new assembly. The duties of the sub-prefect correspond in the arrondissement with those of the prefect in the department, and he is assisted by a council of the arrondissement, to which each canton elects a member.

The commune is the administrative unit, with a mayor at its head assisted by deputy mayors, varying in number according to population. In the large towns the mayors are named by the government from the members of the municipal council elected by the people. This council has powers similar to those of the departments. The mayors are registrars of births, marriages and deaths. In every canton there is a commissary of police, who acts under direction of the mayor. In towns of less than 6,000 inhabitants he is chosen by the people, and in larger ones appointed by the president.

At the foot of the judicial system is a *judge de paix*, judge of the peace, in each canton with jurisdiction in civil causes involving 200 francs or less and in criminal causes where the fine cannot exceed fifteen francs. An appeal lies from judgments for over 100 francs. In every arrondissement is a primary court of general original jurisdiction in civil cases. An appeal lies to the court of appeals from a judgment for more than 1,500 francs. There are twenty-six courts of appeals, which are located at certain chief towns. There are also tribunals of commerce, whose judges are chosen from the merchants by themselves, in the principal cities. Their decisions in cases involving over 1,500 francs are also subject to appeal. For offenses next above the jurisdiction of judges

of the peace there is a special section of the tribunals of first instance, called the *tribunal correctionnel*, to which appeals lie from the judge of the peace, and its judgments are subject to revision by the court of appeals. For the trial of felonies there is the *cour d'assises*, consisting of three judges and twelve jurors. These courts sit in each chief town in the department once in three months. In criminal cases a private preliminary inquiry is conducted by a *judge d'instruction*, who either ends the proceeding by an order of *non-lieu* or passes the case over to the court, to be thereafter conducted by the public prosecutor. At the head of the entire judicial system stands the Court of Cassation, composed of three divisions *chambre des requetes*, *chambre civile* and *chambre criminelle*. It reviews the proceedings of the other courts, which are appealed to it, and corrects errors of law, but does not review the findings of fact. When a cause is reversed, it sends it for a new trial to such court as it thinks fit.

There are also military tribunals, maritime tribunals and councils of discipline for lawyers and other professions. An important institution is the *cour des comptes*, consisting of three chambers with a president in chief and a president of each chamber, a general procurator, a chief *greffier*, 102 councillors, twenty auditors, and eighty-one clerks, which supervises the accounts of all government officials. One of the chief functions of the *juge de paix* is to bring parties to an agreement before suit, and no suit can be brought in the courts of first instance till he has made an unsuccessful effort to bring the parties to an agreement.

The history of France suggests the question why despotisms have lasted so long and republican forms of government proven so short-lived. Nowhere else have higher ideals of the relations of man found expression than in France during the revolution and prior to the advent of Napoleon, yet the republic vanished and the empire followed, supported by the people before whom such high ideals had but just been proclaimed. Little of good existed in the system of Louis XIV, yet his despotism endured to be continued under his successors for the greater part of a century. His was a system of

extorting from the great multitude the major part of their earnings to waste it on idle courtiers or in wars for the glory of the king. Not only were the multitude deprived of the products of their labors through theories of land tenure and taxation, but they were deprived of all access to the great store of knowledge which is at all times the treasure of greatest value. It is difficult to point out any benefit which the Bourbon dynasty conferred on the common people, save a little restraint from harming one another. It is difficult to point out moral qualities in the king or his courtiers which commended them to the support of the people. What then influenced the multitude to submit to his authority? They and their ancestors had been educated through many centuries to do so. The doctrine of the divine right of kings to rule and that their acts as rulers, however lacking in moral quality, were right and not open to criticism, had been taught, not only by state officials of all classes, but by the clergy, who came in close contact with the multitude. A great system had been built, to which all classes had become accustomed. In matters of religion the multitude looked to the clergy for guidance. In matters of state the king was all powerful. The great toiling multitude of peasants were too ignorant and too poor to either appreciate the injustice they endured or make any concerted effort to relieve themselves of it. The mechanics and laborers in the cities were a little better informed, but still without organization or well defined common purposes. The so-called higher classes, those who did not work but profited from the prevailing conditions, had most knowledge of the system under which they lived and least inclination to change it. The great landholder appreciated the advantages he derived from the system of land tenure, which made his tenants his servants. The courtier rejoiced in the system which squeezed revenue from the impoverished multitude, for the greater the sum collected the more there was for the king to lavish on unworthy favorites. The courtiers looked to the king for their incomes and knew that favors were only to be gained by subserviency to his will and pleasing his vanity. Thus at the court of France the art of pleas-



ing came to be studied as of first importance with little less than oriental servility toward the monarch. The clergy as a class found it to their interest to uphold the prevailing system, because it protected them in their vast privileges. Whence then came the impulse of the revolution? From the scholars and thinkers, from those who sought truth rather than personal advancement, from men in whatever station in life who had consciences keen enough to be moved by the abuses of the times and sufficient discernment to comprehend them.

The great schools were centers of advanced investigation. The study of the learning of the Greeks and Romans necessarily carried with it knowledge of their political ideas, and when a great mind like that of Montesquieu proceeded to analyze the prevailing system, he could do no less than condemn the moral basis of it. The art of printing had come to aid in the preservation of knowledge and the dissemination of ideas, and while rigid censorship of all publications was maintained, works like Montesquieu's *Spirit of Laws*, believed not inimical to monarchical institutions, produced profound effects on the minds of students. The church too furnished its quota of reformers. Not all the clergy were content with mere ritual and revenue. Many sought the real meaning of the religion they professed to teach, and perceived how utterly wanting in Christian fraternity was the despotism under which they lived. The spirit of brotherly love and self-denying helpfulness to others, which pervades the teachings of Christ, was altogether wanting in the court and among most of the higher clergy, but there were many in the more humble stations, who took the true spirit of Christ's teaching to heart and sought practical application of them.

When Louis XVI convened the States-General for the first time in 175 years to aid him in his financial difficulties, he brought together moral forces which had been gaining strength through those years, with which his government was unacquainted. The abuses of the kingly government were perceived and condemned, and the true principles which should govern the state were proclaimed. No representative bodies

have ever formulated better statements of the true purposes of government than those which carried on their deliberations during the stormy period of the revolution. The formula of "Liberty, equality, fraternity," caught the hearts of the multitude and was approved by the consciences of many who had profited from the old régime. How then came it that, instead of an era of real good will and fraternity among men, a reign of blood and terror followed? Surely the poison did not inhere in the principles advanced, but rather in the lack of general understanding of them and inability to suddenly substitute a just system for one of arbitrary power. It is one thing to lay down the fundamental principles on which all governments and laws should be founded, and quite another thing to perfect a system of organized society, which shall be able to enforce them in spite of the opposition of the selfish and cunning. Not only is it necessary to formulate just principles as the basis of the social structure, but also to place the enforcement of them in hands that both can and will be just and do right. The great multitude were accustomed to stand in awe of the king and of the great men of his court; they were unaccustomed to participation in the selection of the men who should direct public affairs; they were ignorant of state affairs and of the practical methods by which one class of officials may be made to check the abuses of another. They were accustomed to the abuses of unrestrained power, and the first impulse naturally was to overthrow the king and his courtiers who had oppressed them. If the necessity for doing so be conceded, it was but the lesser task. The far more difficult one of constructing a new and better system for the management of public affairs remained. This new system must be fitted to the then existing society with its inherited ideas and prejudices. The leaders of the revolution made the grand mistake of assuming that a system founded on lofty ideals could be made readily acceptable to a nation whose leading spirits were bitterly hostile to it, and in which a vast majority were too ignorant to form definite opinions or to give expression to their wishes. The government did not fit the people.

In a despotism the habit of obedience to the established authority furnishes the bond which maintains social order. In a republic there must be a feeling of general confidence in the moral purposes of those placed in power, and a prevailing disposition to tolerate sentiments honestly entertained, no matter how erroneous they may appear. The leaders of the opposing political factions soon made the fatal mistake of imputing bad motives to each other, and then of indulging in threats. The reign of terror was preceded by mutual distrust and wild threatenings. The talk of intemperate leaders prepared the ground for the guillotine. If statesmen could be made to know that in morals the crime of advocating war and wholesale slaughter is far greater than that of participation in it by those who become soldiers from a sense of duty, there might be hope for the peace of the world. In France there was distrust by one faction of another, then threatenings then bloody butcheries. The principle was similar to that on which the more excusable wars come about, mutual distrust, fear, hatred and then open violence. The wars instituted by rulers, merely to gratify their ambitions, have been far more numerous and their authors far more criminal. The most pernicious man in public affairs is he who advocates violence either between factions at home or with a foreign power. Though in a defensive war for the preservation of the homes of the people against either a foreign invader or a domestic oppressor the noblest qualities of courage and self-sacrifice for the good of others have often been displayed, the ordinary business of the soldier is to fight, kill and make desolate. War is always brutalizing and demoralizing.

There were leaders of the revolution who did not teach peace, concord and mutual confidence, without which there cannot be liberty, equality and fraternity, but sowed seeds of dissension and advocated bloodshed as a remedy for social ills. Here was the mistake which rendered a republic impossible in their time, for the bloody military spirit naturally and usually leads to a military despotism. Napoleon was the incarnation of the bloody ideals of those who condemned their

countrymen to the guillotine. His hypocritical professions of devotion to popular rights and hatred of kings and tyrants caught the fancy of the multitude and blinded them to his real qualities and purposes. The ideals of the great leaders of the assembly and convention, though generations in advance of the people, were not wholly lost however. Some immediate advantages resulted. The first and most important perhaps of the material gains came from the breaking up of the great estates of the nobility and a vast increase in the number of independent peasant proprietors. The extension of the educational system so as to greatly increase the number of children taught was perhaps of equal or even greater permanent value, and the propagation of fundamental principles of justice and human rights, though for the time productive of many ills, exercised a profound influence for future good not only in France but throughout Europe. Eighty years later these principles had become so generally understood and recognized that a republic was established and has since been successfully maintained.

France is to be congratulated, not only on the great progress made within the last century, but also on the possession of the high ideals of the revolution, which still stimulate to continued improvement.

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